

EXHIBIT 23

MARICOPA COUNTY COMMUNITY COLLEGE DISTRICT

Maricopa County Community College)
District)
)
v.)
)
Dr. Cleopatria Martinez,)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Tempe, Arizona
November 18, 2013
9:32 a.m.

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MCCCD/Martinez 03451

1 HEARING, PUBLIC SESSION, BEFORE THE
2 ADMINISTRATIVE HEARING COMMITTEE OF THE MARICOPA COUNTY
3 COMMUNITY COLLEGE DISTRICT, in the matter of Cleopatria
4 Martinez, held at 9:32 a.m. on November 18, 2013, at the
5 Maricopa County Community College, 2411 West 14th
6 Street, Tempe, Arizona, in the presence of:

7 Dr. Keith J. Crudup, Chairperson

8 Dr. Nora A. Reyes

9 Dr. Carlos F. Caire

10
11 FOR THE DISTRICT:

12 Mr. Pavneet Singh Uppal, Esq.
13 Ms. Shayna Blach, Esq.
14 FISHER & PHILLIPS, LLP
201 East Washington Street, Suite 1450
Phoenix, Arizona 85004

15 FOR THE APPELLANT:

16 Mr. Steven Montoya, Esq.
17 MONTOYA, JIMENEZ & PASTOR, P.A.
3200 North Central Avenue, Suite 2550
Phoenix, Arizona 85012

18 ADVISOR TO THE COMMITTEE:

19 Mr. Ernest Calderon, Esq.
20 Mr. Taylor R. Bell, Esq.
21 RIDENOUR, HIENTON & LEWIS, PLLC
201 North Central Avenue, Suite 3300
22 Phoenix, Arizona 85004

23 (Note: There are various members of the public
24 present throughout the proceedings.)
25

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(NOTE: Pursuant to order of the Committee, all exhibits marked for identification are received into evidence; Page 13, Line 23.)

(NOTE: MCCCCD Exhibits 44, 45, and 46 are not attached and are retained by Mr. Calderon, Advisor to the Hearing Committee.)

EXHIBIT DESCRIPTIONMCCCCD

1	August 9, 2013 Letter, Intent to Dismiss
2	March 20, 2013 Notice of Pre-Disciplinary Conference
3	October 18, 2012 Counseling Notice
4	Dr. Cleopatria Martinez Deposition Transcript, Vol. 1
5	Dr. Cleopatria Martinez Deposition Transcript, Vol. 2
6	April 19, 2013 Sean Garrison Expert Report & Exhibits
7	October 29, 2010 Sean Garrison Memo
8	April 2, 2010 Directive
9	December 9, 2010 Directive
10	Anna Solley Declaration
11	Ronnie Elliot Declaration
12	Joe Sueyoshi Declaration
13	James Sousa Declaration
14	Wilbert Nelson Declaration
15	Dr. Martinez's MAT 082 Lecture Notes

I N D E XEXHIBIT DESCRIPTIONMCCCD

16	Dr. Martinez's MAT 182 Fall 2009 Lecture Notes
17	Dr. Martinez's MAT 182 Spring 2010 Lecture Notes
18	October 15, 2010 E-mail Correspondence
19	Excerpts from Charles P. McKeage Basic Mathematics Textbook
20	Excerpted Comparison Between Charles P. McKeage Basic Mathematics Textbook and Dr. Martinez's MAT 082 Lecture Notes
21	Excerpts from Sullivan & Sullivan Precalculus Textbook
22	Excerpted Comparison between Sullivan & Sullivan Precalculus Textbook and Dr. Martinez's MAT 182 Lecture Notes
23	January 12, 2010 E-mail to Dr. Martinez
24	January 26, 2010 E-mail
25	January 28, 2010 E-mail
26	February 12, 2010 E-mail
27	October 12, 2010 Letter from Dr. Solley to Dr. Martinez Summarizing Chronology of Events
28	MCCCD Copyright PowerPoint Training Presentation
29	Dr. Martinez's Responses to MCCCD's Requests for Production of Documents Regarding Receipts
30	May 31, 1995 Correspondence regarding Transfer to Phoenix College
31	Dr. Martinez's Employee Profile
32	Arizona State Retirement Fact Sheet

I N D E XEXHIBIT DESCRIPTIONMCCCD

33	November 29, 2011 Letter to Dr. Martinez
34	September 17, 2012 E-mail correspondence between Dr. Martinez and Tim Bryan
35	November 28, 2012 E-mail to Dr. Martinez's Students Regarding Refunds
36	December 11, 2012 Student Complaint
37	December 11, 2012 E-mail to Dr. Martinez Regarding Student Complaints
38	December 13, 2012 E-mail to Dr. Martinez
39	Various E-mails Regarding Student Refunds
40	E-mail Regarding Tim Bryan Materials
41	2012/2013 MCCCD Faculty Policy Manual
42	2011 MCCCD Blue Book
43	Printouts from ratemyprofessor.com
44	Precalculus: Concepts Through Functions, Instructor's Edition, by Sullivan & Sullivan
45	Basic Mathematics, by Charles McKeague
46	Bound Tim Bryan Materials Sold to Students

EXHIBIT DESCRIPTIONAPPELLANT

1	3.4 Trigonometry Identities
2	18 Basic Graphs and Conics
3	Math 187 Fall 2010 Pre-Calculus (Algebra) Outline
4	Math 182 Spring 2010 Plane Trigonometry Outline

I N D E XEXHIBIT DESCRIPTIONAPPELLANT

5	MAT187 Test 1, 1.1-1.10
6	Domain and Range of Graphs
7	Homework for Transformations
8	Inverse Trigonometric Functions
9	Calculus I 20, Basic Integration Formulas
10	Tim Bryan's Intermediate Algebra Outline for Syllabus Spring 2011'
11	Chapter 2 Fractions Test for MAT 082
12	Attached A Regarding Violations to Academic Freedom
13	February 7, 2011, Tom Adamson's E-mail regarding Scholarships from Math Department
14	August 21, 2011 E-mail from Dr. Martinez to Joe Sueyoshi regarding Request Copies of my Fall 2011 Schedule
15	September 21, 2010 E-mail from Dr. Kakar to Dr. Martinez regarding Print Request
16	September 22, 2011 E-mail from Dr. Martinez to Joe Sueyoshi Regarding Lecture Notes
17	April 4, 2012 E-mail from Dr. Martinez to Dr. Kakar regarding Request for Permission to Develop Materials
18	December 16, 2010 Letter to Dr. Martinez from Mr. Bellamy
19	Professional Biography of Fredric Bellamy
20	Staples Receipt dated April 2, 2013
21	December 13, 2012 E-mail from Lee Combs to Dr. Martinez Regarding \$11 Refund

I N D E XEXHIBIT DESCRIPTIONAPPELLANT

22	August 23, 2010 E-mail from Estelle Simpson to Dr. Martinez Regarding Substitution of my Problems
23	September 13, 2011 E-mail from Joe Sueyoshi to Dr. Martinez Regarding Latest Copy Request
24	September 16, 2011 E-mail from Dr. Kakar to Dr. Martinez regarding Latest Copy Request
25	April 8, 2010 E-mail from Lee Combs to Maggie McConnell Regarding Conversation Today
26	April 13, 2010 E-mail from Dr. Martinex to Dr. Solley Regarding Request for Meeting with Dr. Solley
27	September 22, 2011 E-mail from Dr. Kakar to Dr. Martinez Regarding Informal Grievance
28	February 7, 2011 E-mail from Dr. Kakar to Dr. Martinez regarding Vocabulary Notes
29	Summary of Trigonometry Identities
30	Geometry Summary
31	February 7, 2011 Permission to Use Handouts Signed by Elena Sung
32	April 15 10.3 Problems 1-8 and 19-27, odd
33	Description of Professor Martinez's Notes
34	September 1, 2011 E-mail from Dr. Martinez to Amalia Valley Villegas Regarding Request Copies of My Fall 2011 Schedule
35	January 7, 2011 E-mail from Dr. Martinez to Dr. Solley regarding Electronic Copy of Dec 9, 2010 letter
36	January 11, 2011 E-mail from David Munoz to Dr. Martinez Regarding Acknowledgment of Receipt

I N D E XEXHIBIT DESCRIPTIONAPPELLANT

37	January 11, 2011 E-mail to Dr. Martinez Regarding Pay.Gov Payment Confirmation
38	January 11, 2011 E-mail from Melissa Sailors to Lee Combs Regarding Previous Request for Information Re: Cleopatria Martinez
39	January 15, 2011 E-mail from Dr. Solley to Dr. Martinez Regarding Electronic Copy of Dec 9, 2010 Letter
40	January 18, 2011 E-mail from Dr. Solley to Dr. Martinez Regarding MAT 120 Outline for Spring 2011
41	February 3, 2011 E-mail from Dr. Solley to Dr. Martinez Regarding December 9, 2010 Directive
42	February 8, 2011 E-mail from Dr. Solley to Dr. Martinez Regarding Copy Request: MAT 120 Homework Outline for Syllabus
43	February 14, 2011 E-mail from Dr. Solley to Dr. Martinez Regarding Tests for M120
44	February 17, 2011 E-mail from Dr. Solley to Dr. Martinez Regarding Meeting Request
45	February 18, 2011 E-mail from Dr. Martinez to Dr. Solley Regarding Meeting Request
46	February 17, 2011 E-mail from Dr. Solley to Dr. Martinez Regarding Meeting Request
47	January 27, 2011 E-mail from Dr. Martinez to Dr. Solley Regarding December 9, 2010 Directive
48	February 4, 2011 E-mail from Dr. Solley to Dr. Martinez Regarding Copy Request: MAT 120 Homework Outline for Syllabus
49	April 4, 2011 E-mail from Joe Sueyoshi to Dr. Martinez Regarding Copy Calc Ch 3 Test

I N D E XEXHIBIT DESCRIPTIONAPPELLANT

50	April 4, 2011 E-mail from Joe Sueyoshi to Dr. Martinez Regarding Copy Calc Ch 3 Test
51	April 5, 2011 E-mail from Joe Sueyoshi to Dr. Martinez Regarding Copy Calc Ch 3 Test
52	April 7, 2011 E-mail from Dr. Martinez to Joe Sueyoshi Regarding Copy Calc Ch 3 Test
53	April 11, 2011 E-mail from Dr. Martinez to Wilbert Nelson Regarding Textbook Required?
54	September 20, 2011 E-mail from Dr. Martinez to Karen Lee Regarding Request Permission to Copy My Lecture Notes
55	April 2, 2012 E-mail from Dr. Kakar to Dr. Martinez Regarding Exam with Graph
56	October 12, 2011 E-mail from Dr. Kakar to Dr. Martinez Regarding Copy Request: Trig Identities
57	September 11, 2013 E-mail from Lee Combs to the Hearing Committee

P R O C E E D I N G S

CHAIRPERSON CRUDUP: I convene the Administration Hearing regarding the Statement of Charges brought by the Maricopa County Community College District, which for the purposes of this hearing we will call Phoenix College against Cleopatria Martinez.

We have a court reporter present and a record will be made of this hearing.

Welcome, everyone. We are the Hearing Committee. I wanted to read the MCCCCD charges against Dr. Cleopatria Martinez. My name is Dr. Keith Crudup, this is Dr. Nora Reyes, and this is Dr. Carlos Caire.

Would counsel and the parties please introduce themselves starting with Phoenix College and then Dr. Martinez.

MR. UPPAL: Good morning. Mr. Chairman and Members of the Committee, my name is Pavneet Uppal; with me is my colleague Shayna Balch, we're from the law firm of Fisher & Phillips, and we represent the District in today's hearing. I also want to introduce my client, President Anna Solley. She is here with us. She is the District representative and President of Phoenix College.

And thank you for your time and look forward to

1 this hearing.

2 MR. MONTOKA: Good morning. My name is Steven
3 Montoya. I'm a lawyer here in Phoenix. This is my
4 client, Dr. Cleopatria Martinez. She's a professor of
5 mathematics at Phoenix College, who's worked for the
6 District for 28 years.

7 CHAIRPERSON CRUDUP: Thank you.

8 MR. MONTOKA: You're welcome.

9 CHAIRPERSON CRUDUP: Are there any witnesses
10 present in the hearing room -- other than -- no other
11 witnesses?

12 We will ask witnesses who have not testified to
13 remain outside the hearing room. Once -- once the
14 witness has testified, they may remain if we have room.
15 I don't think we have much room. Naturally, Dr. Anna
16 Solley and Dr. Cleopatria Martinez who will be witnesses
17 are allowed to remain in the room as they are the client
18 representatives or the client herself.

19 The Hearing Committee has reviewed all the
20 exhibits, briefs, et cetera. We ask the parties to
21 cover the major points of the case. Since the rules of
22 evidence do not apply in administrative hearings, the
23 Hearing Committee is admitting all that has been
24 submitted into evidence to become part of the record.

25 We will now begin the case. The Hearing

1 Committee will allow each side ten minutes each for an
2 opening statement beginning with Phoenix College and
3 then Dr. Martinez.

4 MR. UPPAL: All right. Members of the
5 Committee, good morning. I want to proceed with my
6 opening statement and take you through the charges and a
7 brief summary of the evidence that you will be hearing
8 today. This will also show, I believe, conclusively by
9 the time that you listen to all the evidence -- and
10 thank you for reviewing the materials that we have
11 submitted -- that the recommendation and the request to
12 terminate Dr. Martinez's employment should be
13 recommended by this Committee to the full Board.

14 As you hear the evidence today, I ask you to
15 keep a couple of things in mind as we launch into my
16 summary as well as the main presentation, and it's the
17 following: This is not a court of law. So, the
18 technical rules as you -- as Mr. Crudup -- Dr. Crudup
19 just mentioned, the rules of evidence such as --
20 generally, the rules of evidence do not apply.
21 Similarly, the sorts of things that you hear in the
22 court of law or sorts of things that you might here in a
23 TV drama such as something must be proven beyond a
24 reasonable doubt or by preponderance of the evidence,
25 those standards likewise do not apply.

1 So, what I'm going to ask this Committee is as
2 you evaluate the evidence, as you evaluate the
3 credibility of the witnesses which you will need to do,
4 as you review the documents, apply the standards of
5 common sense; because at the end of the day, this
6 Committee is not caring out the ultimate decision,
7 that's up to the Board. This Committee is charged with
8 making a recommendation to the Board.

9 And I believe that if you apply a standard of
10 common sense, you will see that there is a mountain of
11 evidence in support of the charges, the charges as we
12 will go through basically boil down to three points,
13 which is: One, that Dr. Martinez has violated both the
14 law and the District's rules with respect to
15 misappropriating, misusing, and plain stealing
16 copyrighted materials, that's really what we're talking
17 about.

18 Copyright involves ownership. And here we have
19 a situation where Dr. Martinez, unfortunately,
20 misappropriated and used on her own, materials from
21 three copyrighted textbooks. Here they are. They look
22 like textbooks, they smell like textbooks, they feel
23 like textbooks, and when you open to the second page,
24 there is a copyright notice. There is no doubt about
25 this issue.

1 Likewise, after you hear the evidence, I submit
2 to you that there will really be no reasonable basis to
3 dispute -- and, indeed, Dr. Martinez has never disputed
4 -- that she copied material without permission, without
5 attribution, and in violation of the copyright holder's
6 rights, and inserted them into her own materials which
7 she distributed to her class. And it doesn't matter
8 what her reasons were behind that. The fact is that
9 that act constitutes a violation of copyright and it
10 exposes the District to hundreds of thousands, perhaps
11 even a million dollars in damages.

12 And you will hear expert testimony on this
13 issue.

14 The second major point is that Dr. Martinez
15 then after the District took actions to address her
16 violation of copyright, it was forced to take actions
17 including imposing restrictions upon her copying
18 privileges. Basically, an instructor normally if they
19 adhere to the rules has a right to submit requests for
20 copying to Phoenix Colleges online copy center. Because
21 of these repeated violations, that privilege -- and it
22 is a privilege -- was restricted with respect to Dr.
23 Martinez. In order to address her copyright violations,
24 restrictions had to be imposed upon her right to submit
25 materials to the copy center.

1 In essence, the District imposed a series of
2 restrictions after she violated copyright, after they
3 tried to explain it to her, after they tried to counsel
4 her, after she still continued to violate the copyright
5 rules, the District imposed a requirement that, in
6 essence, her materials that she wanted to use during her
7 classes had to be pre-reviewed, not for purposes of
8 interfering with her academic freedom, but simply and
9 plainly and only, for looking at the fact as to whether
10 those materials, whether or not they contained
11 copyrighted materials that are being used without
12 permission.

13 We had to do this. There was no other
14 alternative in light of the liability situation that Dr.
15 Martinez had created. Dr. Martinez repeatedly violated
16 those copyright restrictions -- excuse me, copying
17 restrictions.

18 Instead of submitting her materials for
19 pre-review, instead of using approved textbooks, instead
20 of having her Department Chairman review the materials
21 to make sure there was no copyright infringement, she
22 repeatedly tried to circumvent these restrictions by
23 directly printing things to the Department printer; by
24 going outside to Staples and making copies on her own,
25 all so she could avoid the review procedures that were

1 put in place to prevent the liability that she had
2 exposed the District to for copyright infringement.

3 Second major issue is as a result of her
4 copyright violations and her attempts to circumvent the
5 restrictions that were imposed upon her, her pattern of
6 conduct culminated in a situation where instead of
7 having students buy textbooks instead of having students
8 -- instead of submitting materials for pre-review for
9 the District to make sure that they didn't contain
10 copyright infringement; her behavior culminated in a
11 situation where she took materials that she wanted to
12 use in class and as the evidence will show and went to
13 Staples and made copies. This too was an act of
14 circumvention. She then took those materials that she
15 had copied at Staples and distributed them to her class
16 and asked her class to pay for those materials.

17 Now, I want to be very clear here. We're not
18 claiming that she turned a profit on this; but, that's
19 not the issue. This was, again, another act of
20 circumvention, another act to avoid the restrictions
21 that had been put in place, and in doing so she violated
22 the District cash-handling rules, which was the ultimate
23 straw that broke the camel's back.

24 You are all familiar with the cash-handling
25 rule. It is a rule that states that unless you have

1 prior permission, you cannot sell anything to your
2 students; you cannot sell Tupperware, you can't sell
3 lottery tickets, you can't sell a novel, and you can't
4 sell course materials. And it doesn't matter whether or
5 not your intent is to try to turn a profit, because the
6 reason for the rule is different. The reason for the
7 rule -- I'm sure it will make common sense to you, but
8 it will also be explained through testimony, the reason
9 for the rule is that an instructor is in a position of
10 power and authority over his or her students. So,
11 imagine a situation where you're an instructor and you
12 say, you require, you recommend, or any way imply to
13 your students that they are required or needs to in some
14 way buy materials from you and pay for them.

15 What is a student going to think?

16 I think most of you have been instructors at
17 one time or another or you might already be. You know
18 what the student is going to think, you're in a position
19 of authority over them. The student is going to think
20 that they have to buy these materials because if they
21 don't buy the materials they may suffer some kind of
22 detriment with respect to their grades or recommendation
23 or whatever authority the instructor holds, and they
24 will conclude that they must buy the materials.

25 CHAIRPERSON CRUDUP: About two more minutes.

1 MR. UPPAL: Thank you.

2 That is the reason why the cash-handling rule
3 is in place, it's to prevent an abuse of power.

4 So, when -- what happened here is that a
5 student came to the District and said that he had bought
6 -- or, she had bought these materials from Dr. Martinez,
7 but Dr. Martinez would not give her a receipt. Well,
8 why? Because common sense would tell you why. She
9 would not give a receipt because she already knew she
10 was violating the rules.

11 So, when this was discovered, the District took
12 action to enforce this rule, and the action it took was
13 first meet with Dr. Martinez and try to counsel her as
14 it had done previously with the copyright issues. Dr.
15 Martinez literally walked out of that meeting. She
16 would not listen to that counseling. Then she was
17 instructed to contact the students with respect to whom
18 she violated the cash handing rules; she did not do so.
19 So, then she was told by Dr. Solley and by Dr. Kakar
20 that she needed to issue refunds. She still did not
21 issue refunds. The District checked on whether or not
22 she was complying with the directive to issue refunds
23 for the materials she had sold in violation of the
24 cash-handling rule. She did not do so.

25 In fact, a spot check of the students who were

1 owed this commission --

2 CHAIRPERSON CRUDUP: Time.

3 MR. UPPAL: If I could wrap up in 15 seconds.

4 CHAIRPERSON CRUDUP: Okay.

5 MR. UPPAL: -- discovered that she had not
6 issued the refunds. So, finally, she was instructed she
7 had to produce cancelled checks and she still has not
8 done so.

9 That's why we're here, it is a pattern of
10 conduct that creates liability and is plainly
11 unacceptable. Thank you.

12 CHAIRPERSON CRUDUP: Thank you.

13 MR. MONTTOYA: How much time do I have?

14 CHAIRPERSON CRUDUP: Ten minutes.

15 MR. MONTTOYA: Ten minutes. I'll try to keep it
16 in mind.

17 The evidence is going to be clear that what my
18 friend Mr. Uppal has told you this morning is nonsense.
19 There is no copyright violation; that is ridiculous.
20 There's something called the Fair Use Doctrine.
21 Scholars since I was in college have been making copies
22 of other people's publications for class work pursuant
23 to the copyright statute without violating any law.

24 Most recently I submitted an opinion,
25 coincidentally decided on Friday of last week, in the

1 case of Authors Guild versus Google. I challenge you, I
2 beg you to get on Google Book, and to plug in the book
3 that's on your desk. You can read 90 percent of it on
4 Google Book for nothing and a federal court ruled that
5 that didn't violate the author's or the publisher's
6 copyright.

7 We have an expert who's been litigating
8 copyright cases for 25 years in the Valley. His name is
9 Fred Bellamy. He's reviewed all these materials and he
10 thinks that the District's allegation that Cleopatria
11 Martinez has violated the copyright law is preposterous.
12 In his words, trumped up. She didn't violate the
13 copyright laws; that is ridiculous.

14 Read the case, get on Google Book and look for
15 yourself. Looking at Google Book -- that makes what
16 Ms. -- Professor Martinez did infinitesimally small.
17 She didn't violate the copyright law; that is
18 ridiculous.

19 In reference to the copyright materials.
20 Everyone knows, you heard of the saying, even a dog
21 knows the difference between getting tripped on and
22 kicked. Anyone knows the difference between selling --
23 hey, I'll sell -- I'm Starbucks, I'll sell you this cup
24 of coffee; and getting reimbursed for something: Hey,
25 I'm going to Starbucks, you want me to pick something

1 up, you can pay me when we get back? That's not selling
2 anything.

3 We'll read the District rules regarding selling
4 or money handling in the course of the hearing and they
5 don't even apply to the situation.

6 The materials that she actually copied, the
7 District was willing to copy them only one-by-one, like
8 one segment of the material per segment. She offered
9 her students: Hey, if you want to borrow mine and go
10 copy it yourself, go ahead. You can. If you want me to
11 copy them all at Staples, we can do that too. She was
12 reimbursed. Not only was she not selling something, she
13 was getting reimbursed for something and she lost money
14 on it.

15 One thing that is completely absent from the
16 Administration's case is any look at this scholar in her
17 totality. And you're scholars, and I urge you to do
18 that, that is your obligation to do.

19 This woman worked her way based on scholarships
20 through undergraduate and through graduate school. She
21 ultimately was awarded a Ph.D. through the University of
22 Colorado all on scholarships based upon her merit. Her
23 mother had a third-grade education. She grew up in the
24 projects on welfare. She has been an educator for the
25 college -- community college district for 28 years. No

1 student has complained about her saying that she is a
2 horrible teacher. She loves teaching.

3 Actually, you know this, she's been with the
4 District for 28 years. She's 65 years old. She could
5 retire. Collect a full pension, get another job, and
6 collect on that, too. The reason why she hasn't done
7 that is because she loves to teach. It would have been
8 a lot easier for her to say: Hey, listen, if you're
9 going to humiliate me this way, if you're going to beat
10 up on me this way, I'm just going to retire. I'm going
11 to bow out. The reason why she didn't do that is
12 because it's wrong to bow out in the face of unjustified
13 charges and it's wrong to leave your job when you love
14 your job and you deserve your job and you haven't done
15 anything wrong.

16 The last thing that I'd like to say within my
17 ten minutes is, you know, God, termination? Even --
18 even if the District is right, does this warrant
19 termination for a scholar who's worked for the District
20 for 28 years?

21 Absolutely not. The punishment, the sanction
22 is not to measure it with the alleged underlying
23 misconduct even if you believe the underlying
24 misconduct. And a principle of justice which should
25 adhere in this proceeding is proportionality.

1 The District's, the Administration's proposed
2 sanction overreaches in its allegations, overreaches in
3 its misinterpretation of the applicable rules and
4 overreaches in its sanction, all the while ignoring the
5 totality of this scholar's -- of this community college
6 professor's lifetime accomplishments in 28 years serving
7 this District. Thank you.

8 CHAIRPERSON CRUDUP: Thank you. Mr. Uppal, you
9 can call your first witness.

10 MR. UPPAL: Excellent. We're going to call our
11 expert, Sean Garrison. Where would the Committee like
12 him to sit? At the end of the table?

13 (Whereupon the witness enters the hearing
14 room.)

15
16 MR. UPPAL: Mr. Lopez was out in the hall and
17 indicated he wanted to sit in as a member of the public.
18 If we can accommodate him, Mr. Chair?

19 MR. MONTTOYA: He is not one of our witness.

20 MR. UPPAL: He is not our witness.

21 MR. MONTTOYA: But we believe he has a right to
22 be here as a member of the public and a member of the
23 District community.

24 MR. UPPAL: We're fine with that.

25 THE WITNESS: Where am I going?

1 MR. UPPAL: You're going right there, Mr.
2 Garrison.

3 Dr. Martinez, I have a request of you. You're
4 fine where you are, but there's a PowerPoint slide right
5 behind you so if you could not shift this way, that
6 would be much appreciated.

7 All right. May we continue?

8 CHAIRPERSON CRUDUP: Yes.

9 MR. UPPAL: All right. Sir, would you please
10 state your name?

11 THE WITNESS: Sean Garrison.

12 MR. UPPAL: And would you please --

13 THE COURT REPORTER: Sorry. I hate to
14 interrupt, but I need to swear in the witness, please.

15
16 SEAN GARRISON,
17 called as a witness herein, having been first duly
18 sworn, was examined and testified as follows:

19
20 DIRECT EXAMINATION

21
22 BY MR. UPPAL:

23 Q. Mr. Garrison, could you please introduce
24 yourself to the Committee and tell the Committee who you
25 are.

1 A. Yes. As I said, my name is Sean Garrison. I
2 am a partner at the law firm of Lewis, Roca &
3 Rothgerber. I practice in the intellectual property and
4 technology practice group at Lewis, Roca & Rothgerber.
5 I've been practicing in that field for 21 years.
6 Exclusively in that field, working primarily with
7 copyrights and trademarks.

8 Q. And how did you become involved in this matter?

9 A. Initially, I received a call and it was either
10 from Maggie McConnell or Lee Combs in the Legal
11 Department indicating that they had an issue at Phoenix
12 College, a copyright issue for which they were looking
13 for an independent review of some materials.

14 Q. And could you explain to the Committee why
15 you're qualified to have conducted that review?

16 A. Well, again, so through -- at that time,
17 probably 18, 19 year's worth of experience practicing in
18 copyright law, advising clients in terms of
19 copyrightability of issues; how you protect your
20 copyright rights; how to analyze whether something is
21 copyrightable or not; how to seek protection; also
22 representing clients in the enforcement and defense of
23 copyright infringement claims.

24 Q. Would it be fair to say that your Legal
25 practice is essentially devoted to advising clients and

1 litigating copyright issues?

2 A. Copyright is a substantial part of my practice.
3 There's also trademarks and a little bit of patent
4 licensing and litigation, yes, in the area of
5 intellectual property. That's all I do.

6 Q. All right, sir. And could you please explain
7 to the Committee in legal and in practical terms, what
8 is a copyright? What's the purpose of a copyright?

9 A. Okay. Sure. So, copyright protects works of
10 authorship, it is created by the U.S. Constitution,
11 Article 1, Section 8 in order to foster the creation in
12 the United States of the sciences and works of
13 authorship.

14 And what a copyright protects is an author's
15 creative and original expression in whatever they may be
16 writing or creating. Copyright -- the purpose of the
17 copyright is then to give that author a limited time
18 period for exclusive control over the works that they
19 create; and that can be to commercialize those works,
20 with the idea being that it's better for the economy,
21 it's better for the society if we foster the development
22 of these -- of these kinds of works.

23 And in exchange for that -- in exchange for
24 author's sharing their works that they've created with
25 the public, they're going to get a limited period of

1 exclusivity with respect to those works that they've
2 created.

3 Q. So, in essence, does a copy- -- under the law,
4 does a copyright holder own the right to financially
5 exploit and benefit the work for which he or she owns
6 the copyright?

7 A. Absolutely.

8 Q. That's -- that's really, basically, the
9 underlying policy and the central rule of copyright law,
10 right?

11 A. The policy is we want to foster these works,
12 right. So, in order to do that and create that
13 incentive, we want to then give the copyright owners the
14 exclusive right to then commercialize and exploit those
15 works to benefit financially from those works in
16 exchange for sharing them with the public.

17 Q. Is there a legal term that someone violates the
18 copyrights, someone who does not hold a copyright if he
19 or she exploits the copyright, or undermines the
20 copyright, or violates it in someway, what is that
21 called under the law?

22 A. It's called "infringement." And it doesn't --
23 in terms of exploitation, it doesn't require any sort of
24 financial aspect to it, but it's simply using the
25 copyrighted work without authorization.

1 Q. I want to ask you a follow-up question on what
2 you just said. So, are you saying that under the law
3 you can violate a copyright even if you do not
4 personally benefit from that?

5 A. Oh, absolutely.

6 Q. Can you give the Committee some common examples
7 of what constitutes copyright infringement?

8 A. Copyright, what it protects is the right to
9 copy the work of authorship; the right to distribute it;
10 the right to publish it, for example; and it gives you
11 that exclusive right. So, an infringement then would
12 be: You are copying the work; you're distributing the
13 work; publishing it in some way without the copyright
14 owner's permission.

15 Q. And can you give the Committee an example of
16 how a copyright could be infringed even though the
17 infringer herself does not financially benefit from the
18 situation?

19 A. Sure. So, you can imagine any number of
20 different scenarios. So, think of perhaps a non-profit
21 entity that works with battered women, and as the
22 director of that non-profit entity, I come across a book
23 that I think will be particularly helpful for the women
24 that come into my shelter and I decide I get a copy of
25 that book, and I scan it or make copies of it and hand

1 it out to all the women that come into my shelter. I
2 don't charge them for it, I give it away. But,
3 nonetheless, I am infringing that copyright because I
4 don't have the right to do that. I'm distributing that
5 work; I'm copying that work without permission of the
6 copyright owner.

7 Q. So, irrespective of the financial motive, even
8 if you have a motive that's completely altruistic, or
9 charitable, or not for your own financial gain, if you
10 exploit a copyrighted work, that may constitute
11 infringement?

12 A. Motive is entirely irrelevant to infringement.

13 Q. So, following up the example you just gave of
14 the battered women's shelter. If a college professor
15 infringes or violates a copyright by distributing
16 copyrighted materials by copying them and giving them to
17 her students, does the same rule apply that motive is
18 irrelevant?

19 A. Oh, absolutely. And the District itself has
20 been sued in that situation before.

21 Q. I think that goes without saying, but could
22 you, since you're here and since this is a large part of
23 your practice, could you explain to the Committee, you
24 know, in the legal and practical terms why is it so
25 important for individuals and institutions such as MCCC

1 [sic] to comply with copyright law?

2 A. Well, I think there's a number of different
3 reasons. One from the standpoint just from an
4 educational institution of academic integrity that
5 itself would create works of authorship to respect the
6 rights of others, number one. But, number two, just
7 from an infringement standpoint, the District and/or
8 college is going to be responsible for the acts of its
9 faculty, and if the faculty is out there infringing
10 someone else's copyright, that's going to lead to
11 potential claims for substantial damages.

12 So, a copyright owner that sues for
13 infringement is entitled to get any actual damages that
14 he or she may prove, which could be, for example, lost
15 profits. You know, in the case of a textbook, I know
16 that that's what you're dealing with here, you know,
17 whatever profits they may have lost from the sale of the
18 textbook. If -- they also have a choice to sue for
19 what's referred to as statutory damages, and that is a
20 notion in copyright law that says, you know, sometimes
21 it's very difficult, if not impossible, to really
22 pinpoint what your real damages are, but that doesn't
23 mean that there's no harm that's been caused by the
24 infringement.

25 And so what the statute then allows is for the

1 copyright owner to elect instead of taking actual
2 damages, statutory damages, and statutory damages can be
3 awarded based on each work that's infringed and then
4 there's a range, anywhere from \$750 per work to \$30,000
5 per work depending on the circumstances. And in case of
6 willful and intentional infringement, the judge has
7 discretion to ratchet those damages up to \$150,000 per
8 work.

9 Q. So, that's not -- those statutory damages that
10 you were explaining to the Committee, those statutory
11 damages are available even if loss profits can't be
12 shown?

13 A. Absolutely right. In fact, that's -- that's
14 usually when a copyright owner will -- there's two
15 instances when a copyright owner will typically elect
16 statutory damages: One is when they're not able to show
17 any actual monetary damages; two would be when perhaps
18 their monetary damages are minimal to some degree.
19 Maybe they can show some, but determining with certainty
20 is a little bit difficult, they can elect to go the
21 statutory damage's route. And they can even go through
22 the case and get answers to both sides of the question,
23 right?

24 So, they can get a ruling that, okay, your
25 actual damages are \$10,000, but we would award \$25,000

1 or a hundred thousand dollars or whatever it might be in
2 statutory damages and the copyright owner can elect at
3 that point in time.

4 Q. So, are these statutory damages which are not
5 dependent on profits, is this a way of the law sending a
6 message to potential copyright infringers?

7 A. Well, certainly in part that is the case.
8 Because, especially, the discretion that the Courts are
9 given in awarding those damages, and then in issues
10 where there are intentional and willful infringement
11 found, being able to escalate those damages
12 specifically.

13 But, even more so than that it is to ensure
14 that the copyright owner is able to get some
15 compensation for the unauthorized use of their
16 copyrighted work even in instances where they really may
17 not be able to show true actual financial damages.

18 Q. And how common is it for copyright holders to
19 bring a lawsuit if they feel that their works are being
20 violated or misused by persons who are acting in
21 violation of copyright law?

22 A. Lawsuits get filed all the time. I can tell
23 you that Pearson Education, the publisher of the
24 "Precalculus Concept Through Functions."

25 Q. Are you pointing at this book?

1 A. Yes, I am.

2 Q. When you say "Pearson," are you talking about
3 the publisher of that book?

4 A. That is the publisher and copyright owner of
5 that textbook. Over the last ten years, Pearson has
6 been a party to over a hundred copyright cases.

7 Q. Pearson publishes textbooks, right?

8 A. Yes, they do. Pearson owns more than 10,000
9 copyrights in the U.S. Copyright Office. I can't tell
10 you exactly how many they have because when you search
11 the U.S. Copyright Office records, there is an upward
12 limit of 10,000 and all I can tell you is that they have
13 more than that.

14 Q. So, if Pearson, the publisher of textbooks,
15 sues for copyright infringement, does this mean
16 educational institutions get sued for copyright
17 violations?

18 A. Oh, absolutely. As I mentioned before, the
19 District itself has been sued for copyright violations
20 in the past.

21 Q. So, this issue of facing the lawsuit for the
22 District itself, when you said the District has been
23 sued, you're referring to MCCD, right?

24 A. Yes, I am.

25 Q. The District itself has been sued for copyright

1 violation?

2 A. It had an issue at Mesa Community College about
3 10 or 11 years ago where a professor took an electronic
4 book, published it on her classroom Website for students
5 to access and use during the term, to download during
6 the term; did not have the authorization of the
7 copyright owner and the copyright owner sued.

8 Q. So, this issue of facing a lawsuit, it's not
9 merely theoretical?

10 A. Absolutely not.

11 Q. It happened.

12 Okay. So, in addition to damages that you were
13 explaining to the Committee, if you face a copyright
14 infringement lawsuit, are there also other issues of
15 liability such as attorney fees at issue?

16 A. Yes. First off, any intellectual property
17 lawsuit and copyright in particular are extraordinary
18 expensive cases to prosecute and defend. The American
19 Intellectual Property Right Association publishes each
20 year a survey of economic costs of litigation in IP and
21 they break that out even geographically so we can figure
22 out, in the southwest, in Arizona, if a copyright
23 infringement case is filed, what's the mean cost of
24 defending the lawsuit. So in lawsuits where the damages
25 are, you know, just a million dollars or less, the mean

1 cost just of defending is \$344,000. So just to defend
2 the lawsuit, regardless of whether it has merit or not,
3 is substantially expensive if you're sued.

4 On top of that, if you get to the end of the
5 lawsuit and you are found guilty essentially or liable
6 for copyright infringement, the judge then has
7 discretion to award attorney's fees to the copyright
8 owner. So, you not only are paying your own costs to
9 defend the case you could get stuck paying the
10 plaintiff's fees as well.

11 Q. So, you just said that the mean number for
12 defending a copyright infringement lawsuit is 344,000.
13 When you say the word "mean," does that mean half of the
14 lawsuits or substantial mean is the middle number?

15 A. That's right.

16 Q. Not an average?

17 A. That's right.

18 Q. Many of the lawsuits would cost \$344,000 to
19 defend?

20 A. Yes.

21 Q. And if the defendant such as the District loses
22 the lawsuit, not only does it have to pay its loses, it
23 also has to pay the other side, the copyright holder,
24 for his attorney's fees?

25 A. Likely.

1 Q. Okay. All right, sir.

2 Are you familiar with Dr. Cleopatria Martinez?

3 A. Only by name. I've never met Dr. Martinez.

4 Q. And how did you come to -- how did you become
5 acquainted -- even though you've not met her, how did
6 you become to learn about Dr. Martinez?

7 A. Again, as I mentioned, I was contacted by the
8 District legal office over an issue at Phoenix College.
9 I went out and met with Cassandra Kakar, Joe Sueyoshi,
10 and Maggie McConnell from the Legal Department at
11 Phoenix College and they explained to me this was in --

12 Q. I don't mean to interrupt you. Let's just
13 establish who they are.

14 A. Sure.

15 Q. One of the people you met with is Maggie
16 McConnell?

17 A. Right.

18 Q. And you understood her to be in-house counsel
19 for the District?

20 A. Correct.

21 Q. And during that same meeting, you met with a
22 Professor Sueyoshi?

23 A. Yes.

24 Q. And he's Chairman of the Math Department at
25 Phoenix College, right?

1 A. That was my understanding.

2 Q. And the third person you met with is Dr.
3 Cassandra Kakar?

4 A. Yes.

5 Q. And she was a representative of the District?

6 A. Vice President of Academic Affairs, if I recall
7 her title correctly.

8 Q. I'm sorry if I interrupted. I wanted to make
9 sure the Committee understood who those people were. I
10 believe you were telling the Committee what transpired
11 at the meeting.

12 A. I went out and met with them, they explained to
13 me that there were some issues with course materials
14 that had been requested for copying at the college
15 copying center, and that there had been a grievance
16 filed by Dr. Martinez over, I guess, a suspension of her
17 copying privileges; that the issue that had arisen back
18 in the early part of 2010 over her course materials, and
19 concerns over whether or not those materials had been
20 copied without authorization from textbooks.

21 So, what the District was asking me to do was
22 take an independent review of four course packets, I'll
23 refer to them as, and make a determination of whether I
24 thought they had been created based on copying or
25 whether there was independent creation.

1 MR. UPPAL: Okay. I want to direct the
2 Committee's attention to Tab 9 of your binders in front
3 of you.

4 Q. BY MR. UPPAL: Mr. Garrison, I'm going to show
5 you --

6 A. I think this is actually Tab 6.

7 Q. I apologize. I was looking at it upside down?

8 MR. MONTROYA: Pavneet, could you tell me what
9 exhibit number that is because you've not given me a
10 tabbed version.

11 MS. BLACH: That is the exhibit list.

12 MR. MONTROYA: So, that is Exhibit 6?

13 MR. UPPAL: Yes. So, that would be the expert
14 report of Mr. Garrison.

15 MR. MONTROYA: I understand. Thank you.

16 Q. BY MR. UPPAL: Mr. Garrison, to expedite
17 everything, I will come around here. I will tell you
18 that before you were admitted to the room that the
19 Committee counsel, Mr. Calderon, had informed the
20 parties that all the materials submitted by both sides
21 had essentially been placed in evidence.

22 So, what we have here is your expert report and
23 there are exhibits behind your expert report. So, for
24 example, we have Exhibit 1 to your report. That's Bates
25 labeled Garrison 0027. That's your Bates label,

1 correct?

2 A. Yes.

3 Q. And a Bates label is a way that lawyers
4 intentionally keep track of documents?

5 A. Correct.

6 Q. So we have four exhibits to your report. Are
7 these the lecture notes or course materials that you
8 were asked to review?

9 A. Yes. These were handed to me at the meeting I
10 had with Dr. Kakar and Mr. Sueyoshi and Maggie
11 McConnell.

12 Q. What was your understanding as to who had
13 created these course materials or lecture notes?

14 A. Dr. Martinez.

15 Q. In some cases the lecture notes are quite
16 thick, they're not just a few pages, they're 50 or 60
17 pages?

18 A. Correct.

19 Q. Okay. Tell the Committee again what were you
20 charged with analyzing with respect to the course
21 materials.

22 A. So, the concern was whether or not the content
23 of these materials had been copied out of copyrighted
24 textbooks; and what the college was looking for -- the
25 District was looking for was kind of an independent

1 analysis. They had already done internally some
2 analysis and had concerns and believed there had been
3 copying and they were asking, essentially, for an
4 independent review.

5 Q. So, then, did you undertake an analysis in
6 which you compared Dr. Martinez's lecture notes that are
7 appended to your expert report against copyrighted
8 textbooks?

9 A. We did.

10 Q. And as you sit here today, what is your opinion
11 as to whether Dr. Martinez engaged in copyright
12 infringement with respect to the lecture notes that are
13 appended to your report?

14 A. Three of the four, there's no doubt in my mind
15 there was copyright infringement, the verbatim of
16 copying out of textbooks that we were able to find, and
17 other evidence that during those time periods there was
18 no authorization in place from the copyright owner of
19 those textbooks to do that.

20 With respect to the fourth one, which is
21 Exhibit 4, and this is the Math 187 fall 2010
22 precalculus algebra outline, I could not determine any
23 specific evidence of copying, but there was an entry
24 that I found to be concerning and highly suggestive of
25 copying.

1 Q. Well, let's leave the fourth one behind. Let's
2 use the first three sets of lecture notes.

3 Just as an aside, you're a lawyer, I'm a
4 lawyer, Mr. Montoya is lawyer, and Mr. Calderon. I
5 think the reasons -- one of reasons people hate lawyers
6 is we are always saying: On the one hand or the other
7 hand. You didn't say.

8 You said: There is no doubt in your mind that
9 what Dr. Martinez did with the respect to the three
10 lecture notes is copyright infringement. Do you have
11 that level of certainty? There's no doubt in your mind?

12 A. There's no doubt in my mind.

13 Q. Let me turn then to the analysis that you
14 conducted. So, first of all, we have these three books
15 in front of us. Do you recognize these books?

16 A. I recognize the top book and I recognize the
17 titles of the other two.

18 Q. Okay. And you basically were trying to compare
19 whether Dr. Martinez's lecture notes contained material
20 that was taken from these types of textbooks, right?

21 A. Correct.

22 Q. And I want to -- can't really see it here,
23 unfortunately, but these -- if the Committee looks at
24 the screen, on the left side there is a picture of the
25 cover of the textbook and on the right side there is a

1 page which I know that you cannot read from the vantage
2 point at which you are sitting, but the right side
3 essentially contains the copyright notice and
4 essentially -- Shayna, can you try and adjust that --
5 essentially you will see in your -- you're welcome to
6 look at the textbooks themselves -- this textbook, for
7 example -- well, Mr. Garrison, you're the expert here.
8 What does that "C" with the circle mean?

9 A. That is the copyright notice. So, it says
10 copyright 2007 Pearson Education, Inc.

11 Q. Okay. We'll go through these a little bit
12 quicker. But, in fact, all of these contain copyright
13 notices, don't they?

14 A. They do.

15 Q. What's the purpose of the copyright notice?

16 A. To do exactly what it sounds like, to give
17 notice to the public that the publisher or claimant in
18 the notice claims copyright of the work.

19 Q. All right. So, next I want to direct the
20 Committee's attention -- I know you're on Tab 6, and if
21 you will turn to approximately page 13 of Mr. Garrison's
22 report. Starting on page 13, Mr. Garrison, and
23 continuing, you have a series of charts that are in your
24 report. These are charts that you prepared, right?

25 A. Yes.

1 Q. What are these charts designed to illustrate?
2 And if the Committee prefers, you can look on the screen
3 here.

4 A. What we did is for each of the four course
5 packets that we received, we created a chart where we
6 found either instances of District copying out of a
7 textbook or some discrepancy in the materials themselves
8 that would be suggestive of having been copied from
9 somewhere else, and we identified in the chart the
10 left-hand column, specifically the pages and item
11 numbers of the materials.

12 Q. What's the left-hand column titled?

13 A. "Course materials page/question number."

14 Q. Okay. So that left-hand column, that is
15 reference to particular citations or particular pages of
16 Dr. Martinez's lecture notes where you contend that you
17 have found copying of copyrighted material?

18 A. I don't content it, it's there.

19 Q. Okay. The second column that says,
20 "Discrepancy or text," what's the purpose of that
21 column?

22 A. So, that is an expositive description of
23 exactly what copying we found.

24 Q. And the third column that says, "Source
25 information," is that essentially --

1 A. That's the -- that's the textbook and where it
2 came from.

3 Q. Okay. And, for example, you have -- you have
4 many of these charts in your expert report, but this
5 first chart for precalculus trigonometry, fall 2009,
6 this contains two-dozen instances, doesn't it, of
7 situations -- or, excuse me, examples where you
8 determined that Dr. Martinez's lecture notes had lifted
9 are verbatim copy material from copyrighted works?

10 A. I believe for this one it was about two dozen.
11 I should say these are just examples, so this is not
12 necessarily an exhaustive list of all the copying that
13 there was. But the point, given the time constraints
14 that we had on the work at the time, was to identify
15 whether or not there was copying and substantial
16 copying; and once we got to that point and were
17 satisfied that, yes, indeed there was, there was no
18 point in beating a dead horse.

19 Q. Gotcha. When you say there is no point in
20 beating the dead horse, do you mean really for your
21 purpose it wouldn't have served a purpose to try and
22 find every single instance of infringement?

23 A. No.

24 Q. This was more than enough for you to conclude
25 without a doubt she had engaged in copyright

1 infringement?

2 A. You could go on forever with the number of
3 pages in that textbook; it just wouldn't have been
4 efficient.

5 MR. UPPAL: I want the Committee to understand
6 that. This is not an exhaustive list of every single
7 act of infringement that Dr. Martinez engaged in. The
8 expert witness just said that he reached a point --

9 MR. MONTROYA: I object.

10 MR. UPPAL: -- where there was no point in
11 beating a dead horse.

12 MR. MONTROYA: Excuse me. I object to a speech
13 from counsel during examination.

14 Q. BY MR. UPPAL: All right. So let's continue.
15 This is a continuation of --

16 CHAIRPERSON CRUDUP: Continue.

17 Q. BY MR. UPPAL: -- of the same chart. And
18 there's no way we can go through every single example
19 precalculus trigonometry but I want to go through a few
20 examples on your chart.

21 A. Sure.

22 MR. UPPAL: The Committee can look at the
23 screen or follow along with its binder. Just one second
24 to catch up here.

25 Q. BY MR. UPPAL: All right. So if we look at

1 this problem, for example, did you -- you will see that
2 there's essentially a triangle with a right angle in it.
3 Did you find this same problem in Dr. Martinez's lecture
4 notes and in a textbook?

5 A. That's right. So, we're talking about -- this
6 is actually from the third course packet, the basic
7 arithmetic, MAT 082, which on my report that starts on
8 page 17, and this particular one is, I believe, the
9 third -- third entry in that report.

10 Now, what we found here was exactly right:
11 Identical image, identical text used both in Dr.
12 Martinez's course packet and the textbook which was the
13 "Basic Mathematics" by McKeage. And I should say we
14 found this not by having the textbook itself in hand,
15 but we found this one through our own due diligence of
16 Google searching. And this section of the McKeage
17 textbook happened to be available on Google, and by
18 putting in the parameters here, we were able to locate
19 it and it was identical.

20 Q. So, Mr. Garrison, I'm glad that you used that
21 example, because before you were admitted to this room,
22 during the opening statements, counsel for Dr. Martinez
23 made an argument that somehow these materials or
24 portions of these materials are available on Google or
25 Google Books, that what Dr. Martinez did couldn't

1 constitute copyright infringement. Could you explain to
2 the Committee what the difference is?

3 A. Well, certainly. The fact that something is
4 available on Google or through a search engine has
5 absolutely nothing to do with whether or not it is
6 protectable as copyrighted material or copyrighted text.
7 That's one of the great myths or fallacies that if it's
8 available on the Internet, it's free for anybody to
9 copy; that's a hundred percent untrue.

10 Q. So, this is also part of your report. And on
11 the left-hand side of the page, this is a comparison
12 that you drew between -- or, is this a comparison
13 between a textbook -- excuse me.

14 This is a comparison -- an illustrative
15 comparison that I want you to explain to the Committee,
16 and essentially would you agree with me that it's
17 showing that on the right side are Dr. Martinez's
18 lecture notes and on the left side are the very same
19 examples of the sources of the copyrighted books from
20 which she took the example?

21 A. This looks to be one example. You can see No.
22 36 on the left side is identical to No. 27 on the right
23 side.

24 Q. And let's just go through another couple of
25 examples. What did you find with respect to problem No.

1 28 on this chart?

2 A. With respect to No. 28, what we see is there
3 appears to be some minor word changes. So, for example,
4 replacing the word "rent" with "house payment."

5 Q. Does that take it out of the realm of
6 copyright?

7 A. No, absolutely not. In fact, many courts will
8 interpret that kind of minor word changing as evidence
9 of intentional infringement.

10 So, ultimately what we found here is the
11 problems and with some minor word changing were
12 virtually identical, 80 percent identical.

13 Q. Okay. And here's one involving where the
14 source copyrighted textbook, Sullivan had a pie chart
15 and the pie chart is missing from Dr. Martinez's lecture
16 notes, right?

17 A. The pie chart is not included but the substance
18 from the pie chart is incorporated into the text.

19 Q. So, basically everything but the pie chart was
20 copied from this textbook?

21 A. Yes.

22 Q. And there are various other examples which I
23 would encourage the Committee to look at.

24 Let's take a look at this one real briefly.
25 What's -- again, on the left-hand side you have Dr.

1 Martinez's -- excuse me. You have the copyrighted book
2 with its example on the left-hand side and on the
3 right-hand side you have what Dr. Martinez incorporated
4 into her lecture notes. Could you explain this to the
5 Committee?

6 A. Well, they're identical.

7 Q. You would agree that's identical as well?

8 A. Correct.

9 Q. Same thing with this example? Basically
10 they're identical except for --

11 MR. MONTTOYA: Objection.

12 Q. BY MR. UPPAL: Would you agree with me that
13 this example is Dr. Martinez's lecture notes are
14 identical except for she didn't include the title
15 "Gallons Per Second"?

16 MR. MONTTOYA: Objection to counsel testifying
17 for the purported expert witness.

18 Q. BY MR. UPPAL: Okay. You know, in light of the
19 objection, I'm going to withdraw the question so there
20 doesn't have to be a ruling on it.

21 Mr. Garrison, why don't you read what's on the
22 left-hand side of the screen that's taken from the
23 Sullivan & Sullivan textbook.

24 MR. MONTTOYA: Objection. I think the witness
25 should testify to the Committee. Reading stuff that

1 anyone can read, that you can read for yourself, that's
2 really not, in my opinion, what we're here for. If he
3 could get to him testifying as to the content of his
4 opinions, fine. But reciting stuff that he's reading on
5 the board, that's really not in my opinion what we're
6 here for and I also think it's a waste of our valuable
7 time.

8 MR. UPPAL: Well, I'd like to respond to that.
9 If Dr. Martinez and her counsel want to stipulate that
10 the copyright infringement was repetitive and rampant,
11 we can move on. But I think it's important for the
12 District -- for the Committee to understand how
13 blatantly and pervasively this individual took
14 copyrighted materials and incorporated them into her own
15 lecture notes.

16 MR. MONTOYA: My response is I think he has the
17 right to prove his case, but reading stuff to you from
18 the board that you can read for yourself, in my opinion,
19 that is a waste of time and that's not what this
20 individual is here to testify about.

21 MR. UPPAL: I submit to you that the time -- we
22 have a certain amount of allotted time and we should be
23 able to use it in the matter that we believe best
24 illustrates the misconduct that the -- that Dr. Martinez
25 engaged.

1 MR. MONTTOYA: I think that's true. If, in
2 fact, the Committee affirms that we have a certain
3 amount of allotted time. If you want to limit time, I
4 encourage him to waste all of his time with this kind of
5 thing, but so far no one has told us what the time limit
6 is, and consequently I object.

7 (Whereupon a discussion was held off the
8 record between advisory counsel and the Committee.)
9

10 CHAIRPERSON CRUDUP: Okay. The hearing today
11 we want to try to stop by 5 o'clock, so we are -- we
12 read through this material, so you can read through what
13 you're doing now, but do not continue with this line,
14 just reading through material.

15 MR. UPPAL: Okay. Excellent. And I just say
16 the reason I ask the witness to read it is in response
17 to any objections which are being interposed essentially
18 because the counsel does not want the Committee to see
19 here how blatantly this was done, but I'm going to move
20 on.

21 Q. BY MR. UPPAL: Mr. Garrison, would you read the
22 example from the copyrighted text on the left-hand side?

23 A. Yes. So out of the textbook, it is problem No.
24 5, and there is in bold "Gallons Per Second" of heading
25 and then the text of the word problem is:

1 "The flow of water from a water facet can fill
2 a 3-gallon container in 15 seconds. Give the
3 ratio of gallons to second as a rate in
4 gallons per second."

5 Q. And --

6 A. If we move to No. 31 from the lecture notes,
7 the text of the word problem is identical.

8 Q. So, I want to respect what the Committee just
9 illustrated, but we're going to just -- without you
10 reading them -- go through. These are, again, examples
11 as I flip through the materials in your expert report,
12 there's just -- would you agree with me that there's
13 just example after example of verbatim copying by Dr.
14 Martinez from copyrighted textbook?

15 A. There is repetitive verbatim copy.

16 Q. And we have many examples of this.

17 MR. MONTROYA: I think this witness already
18 testified -- I wrote it down -- that he could go on,
19 quote, unquote, "forever," unquote. I really think
20 that -- and I ask the Committee, please tell us how much
21 time each side has, then I'll stop objecting and we can
22 move on. Because if he wants to spend his time doing
23 this, that is his right. But I don't want him to take
24 all of the time that he has, me be left with no time to
25 defend her career, she's the one who has something to

1 lose, and then 5 o'clock hits and we're done.

2 CHAIRPERSON CRUDUP: I think this morning
3 for -- we're thinking the morning for his side and
4 afternoon session for your side.

5 MR. MONTROYA: Thank you. I understand.

6 MR. UPPAL: So, I'm just going to draw the
7 Committee's attention to the numerous examples. I will
8 continue.

9 Q. BY MR. UPPAL: Oh. I do want to ask you one
10 thing, Mr. Garrison, before we move on. In addition to
11 copying the word problems, there's examples in your
12 report where Dr. Martinez has, in fact, even copied the
13 graphs or illustrations, right?

14 A. Yes.

15 Q. This is one of those?

16 A. It is.

17 Q. And you did these charts for each of the three
18 textbooks from which you concluded there was copyright
19 infringement?

20 A. We did the charts for the course packets.

21 Q. For three -- okay. Excellent.

22 And here you have before you an e-mail from Dr.
23 Solley which is also in the binder. I want to draw your
24 attention to this portion of Dr. Martinez's e-mail to
25 Dr. Solley on October 15, 2010. I'm going to read out

1 what Dr. Martinez wrote, but what I want you to tell the
2 Committee is what the significance of this is.

3 So, Dr. Martinez wrote: "I indicated in my
4 syllabus instead of a published textbook, I was
5 using lecture notes in my MAT 082 class.

6 Because of this students were not required to
7 buy the textbooks."

8 What is the significance of any of that?

9 A. This is a very key piece, because what this
10 demonstrates is that the lecture notes were serving as a
11 substitute for the textbook.

12 Q. Why is that important?

13 A. Because that is exactly why the publisher then
14 -- the -- they are losing their right to exploit their
15 copyrighted work, because of the substitution. The
16 substitution of the work for the textbook also excludes
17 all of the course materials from being considered a fair
18 use.

19 Q. We'll turn to that exclusion for fair use in a
20 second. But I just want to quickly draw the Committee's
21 attention to ratings from her students to move on:

22 "No book needed; didn't have to pay for the
23 textbook; she just uses a set of lecture notes
24 that she copied for us at Kinkos; she doesn't
25 believe in textbooks so you print work off of

1 her Website."

2 All right. So, Mr. Garrison all of this
3 copyright infringement -- all of these examples of
4 copyright infringement, they involve math, right?

5 A. They do.

6 Q. And we all heard sort of this, you know, saying
7 or statement that math is universal, right?

8 A. Sure.

9 Q. Okay. Well, since we are just dealing with
10 math problems or math equations, please explain to the
11 Committee why what Dr. Martinez did is still copyright
12 infringement?

13 A. So, really, if you want to look at the copying,
14 the instances of copying, there's three aspects to it:
15 We've talked about the word problems; we've talked about
16 the images that are copied; and then the third element
17 of the copying that we found were actual problem
18 equations. So, you know, the example might be, you
19 know, something like $2X$ to the third power plus 42 times
20 8 equals what and you have to solve that equation.

21 Those essentially were the three elements for
22 the math textbook. And why that is then copyrightable
23 and protectable is that it takes a lot of work and
24 creativity to come up with: What examples am I going to
25 use; what problems do I want to utilize in order to

1 illustrate the underlying math principles that we're
2 talking about. The underlying math principles aren't
3 copyrightable, that's not what's being protected, but
4 the decisions to use this particular set of example
5 equations or the language for this particular word
6 problem, that is what is indeed copyrightable and indeed
7 copyrighted by the textbook publishers.

8 Q. So?

9 A. So, yes, these would be examples of the sets of
10 equations that were copied from textbooks that I was
11 referring to.

12 Q. And the sequence of presentation also has
13 copyright significance?

14 A. The sequence of presentation, the compilation
15 of multiple equations into one set is protectable.

16 Q. Okay. How about now?

17 In addition, you gave an example with respect
18 to sequence of equations. What about -- didn't the
19 materials that you reviewed, the lecture notes that you
20 reviewed, did a lot of them contain word math problems?

21 A. They did. And so, you know, again, with
22 respect to the word problems, there is creativity in
23 determining, you know: What words do I want to use; how
24 do I want to put those words onto the page, to then
25 illustrate the underlying principle. And the key for

1 copyrightability is it's only a minimal degree of
2 creativity that's required to have copyright protection.

3 So, this is not -- copyright is not reserved
4 for works of fiction and things that, you know, have no
5 bearing to facts or math principles, copyright extends
6 far beyond that.

7 Q. How about charts or graphic illustration that
8 illustrate math concepts, are those copyright protected?

9 A. Yes.

10 Q. So, in essence -- well, let's just go through
11 it real quickly. So, even though it's math equations,
12 can you explain to the Committee why there's no doubt in
13 your mind what Dr. Martinez did is copyright
14 infringement?

15 A. Because there's repetitive, verbatim copying.

16 Q. And the repetitive, verbatim copying is from
17 textbooks that have what?

18 A. They are copyrighted.

19 Q. They have a copyright notice, right?

20 A. They do have a copyright notice.

21 Q. And, sir, once -- before you -- before you
22 started giving your testimony, there was an argument
23 presented by Mr. Montoya who is counsel for his client,
24 Dr. Martinez, that what Dr. Martinez did constituted
25 fair use. And so to speed things up, could you tell the

1 Committee, A, what is fair use, and why in your opinion
2 what Dr. Martinez did is not fair use?

3 A. Sure. Fair use, I mean, for starters it is
4 what it says, it's a fair use and not an unfair use.
5 And it is a statutory defense to a copyright
6 infringement claim that says: Although you are
7 infringing, in a very limited set of circumstances we
8 may decide that -- or, the Court may decide that it's
9 okay, it's fair, and there are underlying principles.

10 And the two most under- -- I would say the two
11 most important underlying principles for the fair use
12 are: Is what you're doing just copying to serve as a
13 substitute for the original work? In other words, you
14 know, there's no transformation in the work from the
15 original to the new work. And, second, what is the
16 market effect of this infringement? Not just by the one
17 person doing it, but if this were adopted as a regular
18 practice across the market, what effect is that going to
19 have on the market for the copyrighted work?

20 Q. So, as to that second factor, you mean the law
21 looks at not just what Dr. Martinez did but --

22 A. If every professor at every college and
23 university did the same thing, what effect is that going
24 to have on the copyright owner's work.

25 Q. Well, you have in the materials what Dr.

1 Martinez did, which is she didn't require them to buy
2 published textbooks?

3 A. Right.

4 Q. So what would be the effect if every professor
5 did what Dr. Martinez did which is create lecture notes
6 taken from copyrighted books?

7 A. Then you would have substantially less -- if
8 not no -- sales of textbook.

9 Q. Right. Because --

10 A. And they would lose money.

11 Q. Because who would buy the textbook if they
12 didn't need to, right?

13 A. And if they lost money, they wouldn't create
14 new textbooks.

15 Q. So, as to the first factor as to whether the
16 infringer is essentially making a copy to substitute for
17 the original copyrighted work, what is your opinion as
18 to whether or not that's effectively what Dr. Martinez
19 did?

20 A. There's no question, she said it. She said it
21 in her e-mail; she said it in her deposition. That's
22 what she was doing, that was her intent.

23 Q. To make a substitute for the copyrighted book?

24 A. So the students did not have to buy the
25 textbook.

1 Q. So, given that neither factor is present in
2 this case, what's your -- is there really any question
3 as to whether or not Dr. Martinez qualifies for the
4 exception of fair use?

5 A. There's no fair use.

6 Q. There's no fair use here?

7 A. No.

8 CHAIRPERSON CRUDUP: Could I ask one question,
9 please? Can I?

10 MR. CALDERON: Absolutely, Mr. Chair.

11 CHAIRPERSON CRUDUP: What would have made Dr.
12 Martinez's use of copyrighted material in line of fair
13 use without infringing on copyrights restrictions?

14 THE WITNESS: So, a number of things. Number
15 one is and most importantly getting authorization from
16 the copyright owner to create these, that would be
17 number one.

18 Number two would be if what she was doing is
19 simply supplementing and using as illustration from the
20 textbooks that the students were required to buy and did
21 buy. And so it wasn't using it as a substitute but
22 really as more of a supplement of the textbook.

23 Thirdly, with respect to the course materials
24 themselves -- this is kind of spelled out in her
25 communication that is she had with Pearson Education --

1 acknowledgment in terms of where the material was being
2 taken, because without that acknowledgment, without
3 saying this is being used from the Sullivan textbook or
4 the Tussy & Gustafson textbook or the McKeage textbook,
5 the implication of those materials is it's the original
6 work of Dr. Martinez. And given the copying, that
7 didn't occur.

8 CHAIRPERSON CRUDUP: Okay.

9 MR. UPPAL: Dr. Crudup, thank you for your
10 question. And I welcome the Committee to ask any
11 questions of this expert witness that you might have.

12 Q. BY MR. UPPAL: When you said in response to Dr.
13 Crudup's question as to what would have made it fair
14 use, you said authorization from the copyright holder,
15 right? Does that basically mean written permission from
16 the copyright holder?

17 A. It would. So -- in fact, that wouldn't be an
18 issue of fair use because then you have permission to do
19 what you do.

20 Q. Right. The copyright holder can always say to
21 someone: Sure, you can copy my materials?

22 A. Absolutely.

23 Q. And the second one, the second point that you
24 said is the issue of whether what Dr. Martinez did
25 qualifies as a supplementation of the copyrighted

1 material or whether it's essentially a replacement,
2 right?

3 A. Yes.

4 Q. Under that circumstance, to fit under that
5 criteria, wouldn't you have to have the students buy the
6 textbook?

7 A. Yes.

8 Q. And she did the opposite, right?

9 A. Yes. That's the problem here.

10 Q. And the third one, you said acknowledgment.
11 Does that basically mean something like an attribution
12 such as the author thanks such and such,
13 author/publisher for allowing her to use the following
14 materials that are taken from textbook so and so?

15 A. There isn't necessarily -- necessarily any
16 specific wording that you have to use, but what you do
17 have to do is include copyright notices that may be
18 required by the owner, identify the fact that you are
19 copying from another copyrighted work and what that
20 might be.

21 Q. Did she -- did Dr. Martinez do any of these
22 things that -- any of these three things that you've
23 just explained to the Committee what would have allowed
24 her to qualify under fair use?

25 A. Not in any of the four course packets that I

1 reviewed.

2 Q. But you did see Dr. Martinez obtained some
3 permissions, didn't you? And I want to turn to those.

4 As I look for them, why don't you tell the
5 Committee whether you saw any permissions from any
6 publishers for the course materials that you had
7 explained constitute copyright infringement?

8 A. I did not.

9 Q. All right. I want to draw your attention to
10 this letter which is in the binder before the Committee,
11 and it's one of the permissions that Dr. Martinez came
12 up with, and it's dated April 13, 2010, and the
13 highlighted portion says:

14 "This acknowledgment must be carried on the
15 copyright or acknowledgment page of your book,
16 or as a footnote on the page on which the
17 material appears."

18 And then gives the acknowledgment: "Sullivan
19 'Precalculus Concepts Through Function, the
20 Right Triangle,' April copyright 2007,
21 reprinting by permission of Pearson Education."
22 And then the permission section says: "To make
23 up to 35 copies of selected homework problems
24 from each section of Chapter 5, 6, and 7, pages
25 through 371 to 563; for Professor Martinez and

1 students in MAT 187, precalculus, beginning
2 fall 2010 at Phoenix College."

3 Well, here's a permission. Why -- does this
4 change your opinion that Dr. Martinez engaged in
5 copyright infringement?

6 A. No, because the three course packets on which
7 it's my opinion that there is copyright infringement are
8 not covered by this permission statement. Number one,
9 it talks about the fall of 2010. Two of the three were
10 from the fall of 2009 and spring of 2010, so it predates
11 this permission. This would not -- this doesn't apply
12 retroactively.

13 Second, it's very specific to what course it's
14 talking about, it's MAT 187, precalculus. So, it
15 wouldn't apply to the MAT 082 basic arithmetic example.

16 This is typical of what you would see in any
17 sort of permission statement and/or the legal term might
18 be license to copy and use a copyrighted work. And what
19 a copyright owner is able to do is place very stringent
20 restrictions on what you are able to do, and so here you
21 see Pearson's saying you got to put this acknowledgment
22 in your book, you can only use problems from Chapters 5,
23 6, and 7. So, that means if you're using problems from
24 Chapter 4 or Chapter 8, that's not covered. You can
25 only make up to 35 copies. So, the 36 copy would be an

1 infringement.

2 As soon as you step outside the bounds of the
3 authorized permission, you're infringing.

4 Q. And read the last sentence of that permission
5 and tell me if that is complied with?

6 A. "Permission is granted free of fee on the
7 understanding that the above textbook has been
8 adopted for the course and purchased by the
9 students."

10 And that, again, goes to the crux of the issue
11 from a textbook publisher. Yes, we will allow this
12 under certain circumstances, but we need to know that
13 the students are buying the textbook. You can't use
14 your materials as a substitute for our book.

15 CHAIRPERSON CRUDUP: Excuse me. As far as
16 requiring a syllabi professor that may say requires a
17 textbook. In the case of Dr. Martinez, do you have any
18 syllabi as far as the exhibit saying this is the
19 required textbook?

20 THE WITNESS: My recollection was that these
21 were not required textbooks in the semesters that we
22 were talking about.

23 CHAIRPERSON CRUDUP: Okay. Thank you.

24 THE WITNESS: That was the information that I
25 was given.

1 CHAIRPERSON CRUDUP: Another point -- sorry.

2 But, can we take like a five-minute short break?

3 MR. UPPAL: Absolutely, Dr. Crudup.

4 CHAIRPERSON CRUDUP: Thank you. I need five to
5 10 minutes.

6 (Whereupon a recess is taken at 10:57 a.m.
7 until 11:03 a.m.)

8
9 CHAIRPERSON CRUDUP: I'd like to say ideally
10 our lofty goal is to try to get all the arguments in by
11 5 o'clock today. I do want to make sure both sides get
12 equal time. Again, we're shooting for your side this
13 morning and your side in the afternoon.

14 MR. UPPAL: Dr. Crudup, I agree. The only
15 thing I would say is that we started a little bit late.
16 And the other thing I would say is my understanding of
17 equal time is usually that the cross-examination counts
18 toward their time. So, that might take my case after
19 the lunch break, depending on the cross-examination
20 time. Just in fairness.

21 MR. MONTOYA: Can I just say one thing?

22 CHAIRPERSON CRUDUP: Sure.

23 MR. MONTOYA: I think the concept of equal time
24 is unfair in this case because it's my client's job, her
25 livelihood, her career on the line. She should have

1 more time. And moreover equal time. Since they're
2 going first really allows them --

3 MR. UPPAL: Steve, can we reserve that argument
4 until the Committee's advisor is back?

5 MR. MONTOYA: Please don't interrupt me, that
6 is the Chair's job.

7 MR. UPPAL: I just think the Committee's
8 counsel should be here.

9 MR. MONTOYA: I would ask that you direct that
10 I not be interrupted other than by you or Members of the
11 Committee or counsel.

12 So, I think my -- allowing them to go first,
13 allows -- and saying that there's equal time, allows
14 them to actually control exactly how much time that I
15 have and I think that's unfair. Thank you.

16 (Whereupon Mr. Calderon is present in the
17 hearing room.)

18
19 MR. UPPAL: My intent was not to interrupt. My
20 only thought was that the Committee might have wanted to
21 hear that argument and my response when counsel was
22 present.

23 CHAIRPERSON CRUDUP: Thank you. Noted. I
24 guess we can reconvene.

25 MR. CALDERON: I'm sorry. I went to the soda

1 machine.

2 MR. UPPAL: Mr. Chairperson, can I continue?

3 CHAIRPERSON CRUDUP: Yes.

4 Q. BY MR. UPPAL: Mr. Garrison, we're talking
5 about the permission. First of all, did Dr. Martinez
6 produce and have you ever seen a single permission for
7 any of the three sets of summaries that you created in
8 your expert report that show copyright infringement?

9 A. No.

10 Q. With respect to the permission she did produce,
11 I just want to quickly take the Committee through it,
12 they don't apply retroactively, right?

13 A. Correct.

14 Q. And they require an attribution or
15 acknowledgment that the materials were taken from a
16 copyrighted work, right?

17 A. They do.

18 Q. Did that attribution or acknowledgment appear
19 in any of the materials or any of the course notes of
20 Dr. Martinez that you reviewed?

21 A. No.

22 Q. And, finally, the permission requires that --
23 and is granted -- under the understanding that the
24 copyrighted textbook be published -- excuse me, be
25 purchased by the students; is that right?

1 A. It is.

2 Q. Was that requirement met?

3 A. Not to my understanding.

4 Q. You said not to your understanding. But,
5 actually, didn't even review a e-mail by Dr. Martinez to
6 the contrary? We can flip back to it.

7 A. With respect to the MAT 082, she specifically
8 says that.

9 Q. Because of this, the students were not required
10 to buy textbooks?

11 A. She was using her lecture notes instead.

12 Q. She was using reviews from students in other
13 courses essentially saying the same thing --

14 A. Yes.

15 Q. -- isn't there, that they don't have to buy
16 textbooks?

17 A. Yes.

18 Q. No book needed; didn't have to pay for a
19 textbook, these are all student comments.

20 All right. And with respect to these three
21 issues of students not being required to buy the
22 textbook, that the permissions aren't retroactive, and
23 that they require attribution which Dr. Martinez did not
24 give, these three failures carry through with respect to
25 each of their permission that Dr. Martinez produced;

1 isn't it true?

2 A. Yes.

3 MR. UPPAL: So, we could go through all these
4 but the Committee has them before them, so taking my cue
5 from what the Chairperson said, I'm not going to make
6 this point over and over except that if there's any
7 doubt on the Committee's part, we can go through it.

8 But, yes, there are permissions, but they don't
9 apply to the materials that have been infringed; they're
10 not retroactive; there's no attribution; and students
11 aren't being required to buy the textbooks, that's the
12 problem with all of the permissions that Dr. Martinez
13 has produced.

14 Q. BY MR. UPPAL: And, in fact, Mr. Garrison, the
15 fact that Dr. Martinez knows how to go about getting
16 permissions from publishers, does that indicate anything
17 to you?

18 A. Well, I think it does. It would -- it would
19 certainly be used, or could be used, as evidence of
20 willfully trying to evade the restrictions and
21 intentionally infringing on the work.

22 Q. Why does the fact that Dr. Martinez has
23 permissions just not for the works she infringed, why
24 does that show willful violation or willful
25 infringement?

1 A. Couple of things. Number one, you know how to
2 get it, so to then bury your head in the sand and not
3 get it is evidence of intentionally not doing so.

4 Second, when you look through the e-mail
5 correspondence from the fall of 2010, what you see is
6 Dr. Martinez continually going back to Pearson in
7 particular, and kind of changing the scenario, in my
8 view, what looks like to be an effort to get Pearson to
9 say something that, yes, it's okay to use the materials
10 that could then be used out of context.

11 Q. All right. And with respect to the volume of
12 material that Dr. Martinez took without permission from
13 copyrighted textbooks, does that have any significance
14 with respect to fair use or any other issue?

15 A. Well, the -- the volume is certainly a factor.
16 What we saw in our analysis, in my opinion, is that
17 there was more than enough to establish that there was
18 infringement. There is no -- some people believe that
19 there is this rule that if you only take up to a certain
20 percent, that's okay, and it's a fair use; but, that's
21 not the case at all.

22 Although the amount and substantiality is an
23 issue to be considered in the overall fair-use analysis,
24 you can then take a very small part of a copyrighted
25 work and it still would be a substantial piece of that

1 work; and if you do that, that's going to be
2 infringement, it's not going to qualify for a fair use.
3 And if we're talking about in the context of a math
4 textbook that is going to have numerous sections trying
5 to teach numerous different mathematical principles, and
6 you take whole sections of problems to demonstrate a
7 particular mathematical principle, it doesn't make sense
8 to try to do this mathematical equation in your head of,
9 well, what percentage did it take? That is a
10 substantial amount from the textbook as it relates to
11 that particular principle.

12 Q. All right. You've now covered the permissions
13 that Dr. Martinez did produce and why they don't apply
14 with respect to the material that they infringe. With
15 respect to this textbook "Basic Mathematics," did Dr.
16 Martinez produce any permission at all?

17 A. I did not see one.

18 Q. With respect to this one, "Pre-Algebra"?

19 A. I did not see one for that book either.

20 Q. Did you have a chance to review a report that
21 Dr. Martinez produced from a lawyer named Fred Bellamy?

22 A. I did.

23 Q. And who is Mr. Bellamy?

24 A. Mr. Bellamy is a lawyer at Steptoe & Johnson
25 here in Phoenix.

1 Q. And you have nothing against Mr. Bellamy right?

2 A. I do not.

3 Q. And you read his report?

4 A. Yes.

5 Q. Okay. And his -- again, to expedite matters,
6 Mr. Bellamy's report essentially states that in his
7 opinion Dr. Martinez did not engage in copyright
8 infringement.

9 MR. MONTOYA: Objection. I don't think that he
10 can testify to what a piece of evidence says that has to
11 be introduced into evidence first. Mr. Uppal is not a
12 witness in this case.

13 MR. UPPAL: I'll withdraw the question.

14 CHAIRPERSON CRUDUP: Okay.

15 Q. BY MR. UPPAL: What is -- since you read it and
16 since you're an expert, what is the central position of
17 Mr. Bellamy's report?

18 A. Mr. Bellamy argues that Dr. Martinez's course
19 packet or lecture notes -- we don't know exactly which
20 one because he doesn't say -- is fair use.

21 Q. Okay. And does Mr. Bellamy give any opinion
22 with respect to the three charts that you created as to
23 which you've testified Dr. Martinez engaged in copyright
24 infringement?

25 A. I don't recall him addressing the charts at all

1 in his letter.

2 Q. Can you tell from Mr. Bellamy's two-page letter
3 what he reviewed?

4 A. Well, you can't because it says, number one,
5 that the materials you sent include your spring 2000
6 [sic] lecture notes for MAT 182 trigonometry, and the
7 problem we have for that is that two of the course
8 packets that I reviewed have at least a heading in those
9 materials for MAT 182 trigonometry. So, we don't know
10 which of the two, for starters, that he may have been
11 looking at.

12 Then he also says, "as well as the pages from
13 the required textbook that contains similar math
14 problems," but we don't know what textbook that was,
15 what pages those were, and it's my understanding that
16 there wasn't a required textbook in the spring of 2010.

17 Q. So, Mr. Bellamy when he says "required
18 textbook," what does -- what does that phrase illustrate
19 or point to?

20 A. I'm not sure I understand your question.

21 Q. What does "required textbook" mean? Does it
22 mean that the textbook was required?

23 A. It would suggest at least he was told that the
24 textbook was required for the class.

25 Q. So, let's look at the factors that Mr. Bellamy

1 points to in his report. He indicates that the lecture
2 notes do not appear to supplant the textbook but rather
3 to supplement it. What -- what do you have to say to
4 the Committee about that issue?

5 A. That flies in the face of all the evidence that
6 we have, that the purpose of the course materials were
7 to replace the textbook so that the students did not
8 have to buy it.

9 Q. And, in fact, that's what some of the students
10 are saying in their reviews, right?

11 A. Yes.

12 Q. So is it your contention that this is a
13 factually incorrect statement?

14 A. Based on the evidence that I've seen, yes.

15 Q. And, once again, we don't know what Mr. Bellamy
16 looked at, we don't even know whether he looked at the
17 course materials that you reviewed, do we?

18 A. We don't.

19 MR. MONTAYA: It is 11:15. He has taken all of
20 the time testifying for this witness. I just ask that
21 the Committee hold -- not hold that against us, but hold
22 it against him because he has a lot of other stuff that
23 he's going to want to go through you with -- go through
24 with you, and he's taking all of the time and it should
25 only be his time, not -- not our time.

1 MR. UPPAL: I'd like to address this. And I
2 want to say that I've known Mr. Montoya for a very long
3 time and I really respect his capability and what he's
4 trying to do for his client, but this is now about the
5 tenth time he's raised this objection. I think the
6 Committee has ruled on it. But now that we're at the
7 tenth time that the same objection has been raised, I
8 think it's fair to say I need to point out that Mr.
9 Montoya and his client did not even show up on time.

10 MR. MONTOKYA: I think we did. I think we were
11 here early. In fact, I know we were and that can be
12 confirmed with the guard downstairs.

13 MR. UPPAL: Then that's fine, I withdraw that
14 if that's the case. We were here at 9 o'clock and maybe
15 perhaps Mr. Montoya didn't realize, and that's fine.

16 MR. MONTOKYA: We were preparing downstairs and
17 we came up.

18 MR. UPPAL: We were ready to proceed at 9:00.
19 I think this issue has been ruled on.

20 MR. CALDERON: For your information, Chairman,
21 the hearing was set for 9:30.

22 MR. UPPAL: That's fine. We were hear at 9:00,
23 but if it's 9:30, we were here too. But I think Mr.
24 Montoya is actually cutting into my time by making the
25 same objection ten times after the Committee has ruled

1 on it.

2 MR. MONTROYA: I don't think the Committee has
3 ruled on it. And this was a specific request, that his
4 use of his time should be -- should cut into the rest of
5 his time, not into our time. And that's -- that's a
6 request that I urge you -- that's very traditional in
7 these types of cases, that if someone uses up all their
8 time, that's their problem and not the other side's
9 problem. That -- Court's routinely issue rulings in
10 that regard. Of course, you don't have to, but I think
11 -- I think it's appropriate for me to ask you to.

12 CHAIRPERSON CRUDUP: We're going to take that
13 into consideration. There is a good chance we're going
14 to be beyond today the way things are going.

15 So, just a rough timeline. From 9:30 to 9:50
16 we had intro and opening statements; from 9:50 to 11:15
17 we've had Phoenix College -- is that what this says? --
18 and then from 11:50 to 12:30 [sic] let's have lunch; and
19 from 12:20 to 11- -- to 1:20, Phoenix College witnesses;
20 and then and then 1- -- 1:20 to 4:20 Dr. Martinez's
21 witnesses; then from 4:20 to 5:00, closing statements.

22 MR. MONTROYA: Yes.

23 CHAIRPERSON CRUDUP: Let's shoot for that, but
24 there's a good chance we'll have to go to that.

25 MR. UPPAL: I certainly agree and defer with

1 all that, my only point would be as I made previously,
2 Mr. Montoya's cross-examination has to count against his
3 time.

4 MR. MONTOKA: I disagree with that. Not, if
5 he's taking -- not if he's -- not at the rate that he's
6 going. He has known from the very beginning that we
7 only have a short period of time but, yet, he insists
8 stubbornly to proceed the way that he's proceeding, and
9 I respect him for that, but that's his choice and he
10 should bear the responsibility for it, not us.

11 DR. CAIRE: May I ask a question?

12 CHAIRPERSON CRUDUP: Yes.

13 DR. CAIRE: If Mr. Martinez's questioning is
14 taken out of his time, how are we going to guarantee
15 that your questioning will be taken out of your time if
16 it's at the end of the hearing?

17 MR. UPPAL: Well, both sides have to -- both
18 sides' cross-examination have to count against their
19 time allotment. Mine will as well.

20 MR. CALDERON: Mr. Chairman, I recommend that
21 cross-examination be taken out of the time allotment of
22 the person who has called the witness, unless it looks
23 like somebody is asking cross-examination in order to
24 delay, then -- then it should be reconsidered. But
25 normally you present a witness; you ask your witness

1 questions and expect the cross-examination; you get a
2 rebut if you want. That should come out of the time of
3 the person that calls the witness, unless it looks like
4 the person on cross is trying to string it out for no
5 reason, then I would recommend the Hearing Committee
6 tell them stop, we've heard enough.

7 That's my recommendation, Mr. Chair.

8 CHAIRPERSON CRUDUP: Okay. I agree.

9 Q. BY MR. UPPAL: All right. So continuing, sir,
10 with respect to Mr. Bellamy's two-page letter --
11 actually, let me move on.

12 Does it change your opinion in anyway that Dr.
13 Martinez engaged in verbatim and repetitive copyright
14 infringement?

15 A. No.

16 Q. Okay. And does Mr. Bellamy's report address
17 your report in any manner?

18 A. It does not. And it appears to rely upon facts
19 that aren't supported by the evidence that I've seen.

20 Q. And read the fourth item that Mr. Bellamy
21 states in his two-page letter -- well, actually, let me
22 read it and ask you for your reaction.

23 "There does not appear to be any adverse effect
24 on the potential market for the textbook based
25 on the lecture notes, as the students are

1 required to purchase the textbook for the
2 course."

3 What's your reaction to that?

4 A. Well, exactly as I just said. We talked about
5 earlier one of the significant issues being the
6 potential market. And in this case he seems to be
7 relying on the fact that the students are required to
8 purchase the textbook for the course, and the evidence
9 that I've seen is directly to the contrary.

10 Q. Would you agree that Dr. Martinez's -- well,
11 you've already said it. So, you would agree, right,
12 that it was a verbatim copyright infringement?

13 A. In many cases.

14 Q. Would you agree it was rampant?

15 A. Correct.

16 Q. How about pervasive?

17 A. That's a fair characterization.

18 MR. UPPAL: I pass the witness.

19 THE WITNESS: Yes.

20 MR. MONTTOYA: May I proceed?

21 CHAIRPERSON CRUDUP: Yes.

22

23

24

25

CROSS-EXAMINATION

BY MR. MONTOYA:

Q. You practice law privately?

A. I do.

Q. Intellectual property?

A. Correct.

Q. Do you litigate copyright cases?

A. I have, yes.

Q. You ever represented any publishers?

A. Any publishers, no.

Q. Would you like to?

A. I --

Q. It would be a good client, right?

A. Any potential client can be a good client.

Q. Wouldn't a large publisher be a good client,

Mr. Garrison? That's true, isn't it?

A. Could be.

Q. Now, Mr. Garrison, you know this report of yours, what's it dated?

A. Which report are you referring to?

Q. Your expert report that's right in front of you beginning with page 1, Garrison page 1. What's the date of that, please?

Do you mind if I come and show you?

1 A. This is Exhibit 6, April 19th, 2013?

2 MR. MONTROYA: Can I move this so I don't trip
3 over it?

4 MS. BLACH: Yes.

5 Q. BY MR. MONTROYA: Okay. And I'm looking at the
6 first page. Did you prepare this in the context of a
7 lawsuit?

8 A. Yes, I did.

9 Q. Okay. And as an expert witness in a lawsuit,
10 you're hired to add -- to help the person who hired
11 you's case, aren't you?

12 A. I'm hired as an expert witness to give you an
13 opinion on whatever is at issue in the case.

14 Q. Have you ever heard of a client hiring an
15 expert who gives adverse opinions that is disclosed to
16 the Court?

17 A. I've seen that happen all the time, yes.

18 Q. Have you ever -- isn't it true that before a
19 client discloses an expert in federal court, the client
20 gets a preliminary opinion from the expert to see if it
21 helps the client's case?

22 A. Not always the case, no.

23 Q. How many cases have you tried in federal court,
24 sir?

25 A. In federal court, to trial I would say probably

1 one or two.

2 Q. How many years have you been practicing?

3 A. Twenty-one.

4 Q. Twenty-one years you've tried to two federal
5 cases?

6 A. Yes.

7 Q. Were they in copyright? If you can --

8 A. I do not remember.

9 Q. -- remember.

10 You don't remember.

11 MR. UPPAL: Could -- could you let the witness
12 answer the question, please?

13 MR. MONTROYA: Chair, I don't want to get into
14 any arguments with opposing counsel. Consequently, I'm
15 going to ask opposing counsel to direct his questions
16 not to me but to the Chair.

17 MR. UPPAL: Objection. In that case -- very
18 well.

19 Objection. I request the Chair direct Mr.
20 Montoya to allow the witness to answer the question
21 before he moves onto the next question and not talk over
22 the witness.

23 MR. MONTROYA: And I'll try to. I'm trying to
24 go quickly.

25 Q. BY MR. MONTROYA: How many appeals have you

1 argued regarding the issue of copyright, sir?

2 A. One.

3 Q. Okay. Have you ever been qualified as an
4 expert in federal court?

5 A. I have not.

6 Q. Now, tell -- tell the Members of the Committee
7 how much money you were paid to prepare this opinion of
8 yours.

9 A. I'm paid \$500 an hour.

10 Q. Times how much? You know, mathematics. Right?

11 A. I had not calculated how much time I spent on
12 it, but probably in the nature of -- neighborhood of
13 \$10,000.

14 Q. Okay. And how much have you charged them to
15 prepare for this hearing?

16 A. I haven't sent out a bill yet, but it's been
17 probably another 7 to 10 hours.

18 DR. REYES: Mr. Chairman, may I ask a question,
19 please?

20 CHAIRPERSON CRUDUP: Yes.

21 DR. REYES: Would it be possible, rather than
22 to try to get a person's character and profession, if we
23 can focus on the packets we were presented.

24 MR. MONTTOYA: I will.

25 DR. REYES: Because we can waste a lot of time.

1 MR. MONTTOYA: I will, but let me respond to
2 that. The reason why I'm going into this is because
3 this shows -- I do like Mr. Garrison, he's certainly a
4 nice man; however, it's important for the Committee to
5 know that expert witnesses -- lawyers know you can find
6 an expert witness to say anything. They are not
7 objective; they are not neutral. And one of the most
8 important attributes of a witness is lack of bias and
9 neutrality, and I am establishing that this witness is
10 hardly neutral, he is a paid advocate who's already --
11 who's an expert witness in a federal lawsuit on behalf
12 of the District and it does go to his credibility. He's
13 not someone who just is giving you a scientific
14 analysis.

15 But I was able to be done with that part of it
16 anyway.

17 DR. REYES: One more question. Did you -- did
18 you have any opposition to the facts that were shared by
19 Mr. Garrison?

20 MR. MONTTOYA: Oh, yeah. I'm about to get to
21 that.

22 DR. REYES: If you can please --

23 MR. MONTTOYA: I will.

24 DR. REYES: -- stick with those points, that
25 will be appreciated.

1 MR. MONTOYA: I will.

2 Q. BY MR. MONTOYA: Do you have any math
3 background?

4 A. Other than math classes that I took in college,
5 no.

6 Q. Were you a math major?

7 A. I was not.

8 Q. What did you major in?

9 A. I went in as a physics major and come out as a
10 comparative literature major.

11 Q. Okay. Did you understand the equations that
12 you were reviewing?

13 A. I didn't feel that I had to -- had to
14 understand the equation to know whether or not --

15 Q. Can you answer the question?

16 A. -- there was copying.

17 Q. Can you answer the question?

18 A. I am.

19 Q. Answer the question?

20 A. I am.

21 THE COURT REPORTER: I'm sorry. I'm sorry.
22 Please, one at a time.

23 THE WITNESS: If you would allow me to answer,
24 I'd be happy to do that.

25 MR. UPPAL: Mr. Chairman?

1 Q. BY MR. MONTOYA: Did you understand the
2 equation, that's the question?

3 MR. UPPAL: Mr. Chairman.

4 CHAIRPERSON CRUDUP: Yes.

5 MR. UPPAL: I object. Once again Mr. Montoya
6 is not allowing the witness to answer the question when
7 he doesn't like the answer. And so this -- this is just
8 fairness. And the witness said it himself before I
9 objected, he wants to answer the question.

10 CHAIRPERSON CRUDUP: Please allow the witness
11 to answer.

12 MR. MONTOYA: He wasn't answering.

13 MR. UPPAL: That's argumentative.

14 MR. MONTOYA: Okay. Well, let me ask the
15 question. It's a super simple one grammatically.

16 MR. UPPAL: No. No, I object. He had an
17 answer he wanted to give and he should be allowed to
18 give it before we move on to the next question.

19 CHAIRPERSON CRUDUP: I'll allow the witness to
20 answer the question.

21 MR. MONTOYA: Okay. Okay.

22 Q. BY MR. MONTOYA: Go ahead and answer.

23 A. I believe what I said was: In order to
24 determine whether or not there was copying, I did not
25 have to understand the equation or not.

1 Q. Okay. I understand that.

2 A. So, I didn't focus on that.

3 Q. Okay. Did you -- now, here's the question --
4 that I understand what you just said, you say you didn't
5 have to.

6 My question is: Did you understand the
7 equations?

8 A. I didn't focus on that one way or the other to
9 try and understand them or not.

10 Q. Okay. Do you believe that mathematical
11 formulas and equations can be copyrighted?

12 A. The underlying principles? I'm not quite sure
13 I understand your question.

14 Q. Well, okay. Do you understand that there are
15 mathematical formulas and mathematical calculations
16 applying those formulas?

17 A. So, you're talking about something like " πr^2 "
18 is the area of a circle, that kind of equation?

19 Q. That's a formula.

20 A. A formula is that what you're referring to?

21 Q. And that formula can be represented numerically
22 and graphically using geometry, correct?

23 A. No.

24 Q. Okay. Can that be copyrighted?

25 A. The formula itself, no.

1 Q. Okay. Now, can mathematical calculations be
2 copyrighted?

3 A. Yes.

4 Q. That's your view?

5 A. Yes, if you --

6 Q. Okay. Are you aware that the Supreme Court of
7 the United States has ruled -- do you know what an
8 algorithm is?

9 A. I do know what an algorithm is.

10 Q. Tell the Committee what an algorithm is.

11 A. An algorithm is a formula that is used by a
12 computer to carry out a particular function.

13 Q. Only by a computer?

14 A. Well, it doesn't have to be a computer.

15 Q. Do mathematicians use mathematical algorithms?

16 A. Yes, they do.

17 Q. Okay. Answer the Committee whether or not an
18 algorithm is subject to copyright?

19 A. Subject to copyright?

20 Q. Yes. That's a simple question.

21 A. As an algorithm expressing a particular
22 principle of math, I don't think it would be.

23 Q. Okay. Now, it's true that insubstantial
24 copying doesn't violate the copyright law, right?

25 A. I don't think you can just say "insubstantial

1 copying."

2 Q. Isn't substantiality an element of a copyright
3 claim? The infringement has to be substantial; isn't
4 that true, yes or no?

5 A. No, there has to be copying.

6 Q. Okay. But the copying has to be substantial,
7 right?

8 A. No. The copying -- there has to be copying. I
9 think what you're referring to, sir, may be the concept
10 of substantial similarity.

11 Q. Well, okay. So, did you try to find out how
12 extensive the copying that you claimed Professor
13 Martinez was -- how extensive, was it?

14 A. I think the charts that I prepared showed that
15 it was very extensive.

16 Q. Okay. Now, let's do a little bit of
17 arithmetic. What percentage was copied and what
18 percentage was not?

19 A. As I said in my direct testimony, you wouldn't
20 do that --

21 Q. You don't know?

22 A. -- calculation.

23 Q. Do you know?

24 MR. UPPAL: Objection.

25 MR. MONTROYA: He answered the question. He

1 said he didn't know.

2 MR. UPPAL: When Mr. Montoya -- objection.
3 When Mr. Montoya does not like the answer, he cuts off
4 the witness, the witness has not completed his answer,
5 and Mr. Montoya once again raised his voice, cut off,
6 and tried to move ahead. So, I want the witness to be
7 able to answer.

8 CHAIRPERSON CRUDUP: Let the witness answer.

9 Q. BY MR. MONTOYA: Do you know what --

10 MR. UPPAL: Wait.

11 MR. MONTOYA: Okay. Go ahead.

12 MR. UPPAL: Objection.

13 Q. BY MR. MONTOYA: Go ahead. Answer away.

14 A. What was the question?

15 Q. The question was: Do you know --

16 MR. UPPAL: No. I -- I -- objection.

17 MR. MONTOYA: What the --

18 MR. UPPAL: I'd like the exact question read
19 back.

20 MR. MONTOYA: And that's the Chair's call, not
21 your call, Mr. Uppal.

22 MR. UPPAL: I didn't say it was my call. I
23 said I would like the question to be read back.

24 CHAIRPERSON CRUDUP: Just rephrase the
25 question, please.

1 Q. BY MR. MONTOYA: Okay. Do you know what
2 numerical percentage Professor Martinez copied from the
3 source works in any particular example?

4 A. I -- no. Other than the particular examples
5 were verbatim copying.

6 Q. You --

7 MR. MONTOYA: Okay. And the reason why I
8 interrupt him, I would ask that the witness be directed
9 to answer my questions. We are really pressed for time.
10 If you want to come in and be here all day, that would
11 be fine, but I really would like to move on.

12 MR. UPPAL: Objection. That's argumentative.
13 He's answering the questions, Mr. Montoya just doesn't
14 like the answers he's getting so he keeps cutting the
15 witness off.

16 CHAIRPERSON CRUDUP: Please.

17 Q. BY MR. MONTOYA: Now, so you claim Professor
18 Martinez infringed the copyright laws or violated the
19 copyright laws?

20 A. Yes.

21 Q. Okay. Tell the Committee -- this is really
22 important -- in your view, when was the last instance in
23 your opinion of infringement? Chronologically in time
24 when was the last incident?

25 A. I'm not -- well, I'm not sure I understand the

1 question. Are you talking about of the four course
2 materials that I review?

3 Q. Of everything you reviewed, whatever it was
4 that you reviewed, when -- tell the Committee when the
5 last infringement was in time chronologically.

6 A. Well, of the four course packets that I
7 reviewed the last once came from the fall of 2010.

8 Q. Okay. So that was three years ago?

9 A. Yes, it would be.

10 Q. What's the statute of limitations on copyright
11 claims?

12 A. Three years from the discovery of the
13 infringement.

14 Q. Okay. And you saw this correspondence
15 between -- do you know whether -- okay. You claim that
16 -- a paid expert witness -- that Professor Martinez
17 violated the copyright laws. Do you know whether the
18 publisher's lawyers, their teams of lawyers have claimed
19 that Professor Martinez has violated the copyright laws?

20 A. No, I have no idea.

21 Q. You said that fair use was a statutory defense;
22 is that true?

23 A. Yes, it is.

24 Q. It's also a common law defense, isn't it?

25 A. Well, there is no more common law copyright.

1 That was abolished by the 1976 Copyright Act.

2 Q. But, in fact, the statute incorporated the
3 common law, right?

4 A. The statute codified certain elements from the
5 common law; but it's a statutory defense, there's no
6 more common law.

7 Q. So, according to you there's no common law of
8 copyright. What about copyright cases subsequent to the
9 passage of the Copyright Act, isn't that a common law of
10 copyright?

11 A. I'm not sure I understand your question.

12 Q. I withdraw the question.

13 Now -- now, you say that whether or not
14 something is on Google has nothing to do with copyright?

15 A. I believe what I said is whether or not
16 something is available on the Internet, whether that's
17 through Google or anywhere else, does not mean that it
18 is not protected by copyright.

19 Q. Have you ever been on Google Books?

20 A. I'm not sure if I have.

21 Q. Have you ever heard of an author named Toni
22 Morrison?

23 A. Yes.

24 Q. Were you a fan of hers?

25 A. I wouldn't say a fan but I've heard of her.

1 Q. Have you ever heard of her famous book,
2 "Beloved"?

3 A. No.

4 Q. Do you know whether or not you can read
5 90 percent of it on Google Books even though it's
6 copyrighted?

7 MR. UPPAL: Objection. Facts not in evidence.

8 MR. MONTROYA: I'm asking him what he knows.

9 MR. UPPAL: No, that --

10 THE WITNESS: No, I don't know.

11 MR. UPPAL: -- that presupposes something.

12 CHAIRPERSON CRUDUP: Okay. Go ahead and answer
13 it.

14 Q. BY MR. MONTROYA: Do you know whether or not you
15 can read 90 percent of Toni Morrison's famous book
16 "Beloved" on Google Books?

17 A. I do not.

18 Q. Have you ever heard of a -- you like legal
19 books?

20 A. Not particularly.

21 Q. Have you ever heard of a book called "Simple
22 Justice" by Richard Kluger? It won the National Book
23 Award?

24 A. No.

25 Q. Do you know whether -- so, you wouldn't know

1 whether you can read that book that's copyrighted in
2 it's entirety on Google Books?

3 A. I do not.

4 Q. Now, what is your -- you went to Columbia Law
5 School?

6 A. I did.

7 Q. That's a fine law school, isn't it?

8 A. I -- I liked it. I had --

9 Q. It's in the Southern District of New York,
10 right?

11 A. It is in the Southern District of New York.

12 Q. In fact, a lot of intellectual property
13 litigation transpires in the Southern District of New
14 York in Downtown Manhattan, right?

15 A. It does.

16 Q. So, it's -- the Southern District of New York
17 is a hotspot for copyright litigation, isn't it?

18 A. Between the Southern District of New York and
19 the Ninth Circuit, those probably are the two primary
20 venues.

21 Q. Well, have you read the District Court's recent
22 opinion in Authors Guild versus Google?

23 A. I'm aware of it; I've not read the opinion.

24 Q. Are you aware that a federal judge ruled in
25 that case that Google Books --

1 MR. UPPAL: Objection.

2 Q. BY MR. MONTROYA: -- didn't violate --

3 MR. UPPAL: Objection. Where is this in Mr.
4 Montoya's submissions? I'd just like to be cited to the
5 exhibit.

6 MR. MONTROYA: I'll tell you, it's in the
7 citation of supplemental authority that I filed with the
8 Committee's counsel, each Member of the Committee, and
9 opposing counsel on Friday. That's exactly where it is.
10 Plus, it's also all over the Internet. It's the biggest
11 news in the area of copyright for the past month.

12 MR. UPPAL: I don't have it. Is it an exhibit?
13 I mean, you can just point me to -- I've -- I got a
14 binder of your materials.

15 MR. MONTROYA: What I'll do is I got a copy for
16 you. Here's a copy for you.

17 MR. UPPAL: But my question was --

18 MR. MONTROYA: Don't ask me questions.

19 CHAIRPERSON CRUDUP: He supplied it by e-mail
20 to us on Friday.

21 MR. UPPAL: Where is the actual document? Was
22 it -- is it in evidence? I just -- it's a question at
23 point. Is the -- is the --

24 MR. MONTROYA: Can I answer?

25 MR. CALDERON: I'll answer. Mr. Chairman, I

1 understand everything that was submitted has been
2 admitted as evidence, the whole shebang.

3 MR. UPPAL: So, Mr. Calderon, was the opinion
4 submitted by Mr. Montoya?

5 MR. CALDERON: Everything up to this morning
6 when we started at 9:30 is in the record.

7 MR. UPPAL: Very good.

8 Q. BY MR. MONTTOYA: Okay. Have you ever heard of
9 a Jurist named Denny Chin?

10 A. I do not know Denny Chin.

11 Q. Have you ever heard of the United States Court
12 of Appeals for the Second Circuit?

13 A. Yes, I have.

14 Q. Isn't that one of the most renowned circuit --
15 federal circuit courts in the United States?

16 A. It's the Court of Appeals for the Southern
17 District of New York.

18 Q. Is that a yes or a no?

19 A. I don't know how you measure whether it's
20 renowned or not.

21 Q. You think it's renowned, don't you?

22 A. No, I wouldn't determine it to be renowned or
23 not.

24 Q. Okay. Are you aware that Denny Chin, even
25 though he was sitting as a District Court judge is in

1 fact really a judge on the Second Circuit Court of
2 Appeals?

3 A. I am aware of that now that you mentioned it.

4 Q. And are you aware that in Judge Chin's written
5 opinion of last Friday, he concluded that Google Books
6 did not violate the federal copyright laws because
7 Google Books copying of over 20 million books --

8 MR. UPPAL: Objection. Is this a question or a
9 speech?

10 Q. BY MR. MONTROYA: -- was fair use under the
11 copyright law? Are you aware of that, question mark?

12 THE WITNESS: May I respond?

13 CHAIRPERSON CRUDUP: Yes. Respond.

14 THE WITNESS: I am aware that the opinion was
15 released on Friday. As I mentioned, I have not read
16 that opinion. I am aware that the opinion found that
17 the Google Books' indexing of the books was -- was
18 not -- was a fair use.

19 And the issues that I understand from the
20 summaries that I have read on that case were that there
21 were two principle differences in that case from what we
22 have here. Number one being that Google's copying was
23 transformative in nature in that the purpose of what
24 Google was doing was to index and make numerous books
25 that are, for example, no longer in print available to

1 be found and located, number one; but, number two, that
2 these were not intended to be a substitute for obtaining
3 the books themselves.

4 Q. BY MR. MONTOYA: Okay.

5 DR. REYES: Mr. Chairman, may I?

6 CHAIRPERSON CRUDUP: Yes.

7 DR. REYES: A question regarding -- we all
8 received the Google document and information --

9 MR. MONTOYA: Yes.

10 DR. REYES: -- and appreciate that.

11 My question is in regard to how it was
12 presented by Google. I believe they have reference
13 information for where they took the -- the information,
14 what was being scanned. There was all these citations.
15 So, if we could stick to that line of questioning with
16 regard to the fact of --

17 MR. MONTOYA: Well -- well, we really can't
18 because you've not been on Google Books obviously --

19 DR. REYES: Yes, I have.

20 MR. MONTOYA: -- because it's not a question of
21 citation, Professor, it's a question of wholesale
22 complete copying. This isn't a question of pulling out
23 a paragraph without citation, this -- they copied 90
24 percent of Toni Morrison's book, including the cover.

25 So, my basic point is --

1 MR. UPPAL: Objection. Objection. So I just
2 want to say to the Committee that what Mr. Montoya just
3 said is argument. He's not a witness.

4 MR. MONTOYA: I answered a question.

5 MR. UPPAL: He has no expertise in copyright
6 law. He's not a copyright lawyer. I would just say to
7 the Committee, he's saying a lot of things under the
8 guise of a question that's actually a speech. For what
9 he says, there's no evidence.

10 MR. MONTOYA: Well, my response would be, the
11 evidence is Judge Chin's 30-page written opinion that
12 speaks for itself.

13 And the evidence is also something that you can
14 take judicial notice of and that is Google Books. I'm
15 telling you, they are replicating these books --

16 MR. UPPAL: He's telling you -- objection.

17 MR. MONTOYA: -- virtually in photo.

18 MR. UPPAL: That's argument. That's not a
19 fact.

20 MR. MONTOYA: I'm answering a question --

21 MR. UPPAL: He's telling you.

22 MR. MONTOYA: -- that a Member of the
23 Committee --

24 MR. UPPAL: He's telling you. This is
25 argument.

1 MR. MONTOYA: I was trying to answer a
2 question, Professor.

3 DR. REYES: Okay. I'm just going back to what
4 was stated. And based on my own notes, I understood Mr.
5 Garrison to say in response to a previous question what
6 would have made Dr. Martinez's use of copyright material
7 aligned with fair use, and the response was getting
8 authorization from copyright to -- well, in my -- in my
9 words.

10 MR. MONTOYA: I understand. That's a good
11 point. I want to go to --

12 DR. REYES: -- as supplemental; not substitute
13 for textbook; and acknowledgment regarding the source as
14 to whether the material came. That's what I'm trying to
15 get back to.

16 MR. MONTOYA: And, thank you. I want to get
17 back to that.

18 DR. REYES: Okay.

19 Q. BY MR. MONTOYA: I'm going to show you
20 something on my little iPad that you guys can see, too.
21 It's what I've been talking about. It's Toni Morrison's
22 book "Beloved" on Google Books. Does this look like a
23 supplement or the actual book?

24 A. It looks to be a scan of the book.

25 Q. Yeah. And it's your understanding that --

1 isn't it true that three private authors with
2 copyrighted books -- not out-of-print books, not books
3 whose copyright had expired -- sued Google for copyright
4 infringement in Authors Guild versus Google?

5 A. I do not know how many there were.

6 Q. You don't?

7 A. I don't.

8 Q. You don't know whether or not you agree with
9 Authors Guild versus Google or not because you haven't
10 read it, have you?

11 A. I haven't read the opinion. I did note on the
12 website there --

13 Q. And --

14 CHAIRPERSON CRUDUP: Five more minutes.

15 THE WITNESS: Excuse me. Next to the scan,
16 that there was -- that there was an icon and
17 availability there that said "buy the book." That you
18 could click on it to buy it and either download it or
19 have it sent to you.

20 Q. BY MR. MONTTOYA: Yeah. And actually you can
21 buy -- you can buy the --

22 MR. UPPAL: Objection. It's not a question.

23 MR. MONTTOYA: Okay.

24 MR. UPPAL: Here we go again.

25 MR. MONTTOYA: That was not responsive to my

1 question.

2 MR. UPPAL: If Mr. Montoya is going to continue
3 this, I should get to cross-examine him.

4 CHAIRPERSON CRUDUP: Move on.

5 Q. BY MR. MONTOYA: Under the Fair Use Doctrine
6 you don't need the copyright holder's permission, do
7 you?

8 A. That's correct.

9 Q. Under the Fair Use Doctrine, the mere fact that
10 you cite the source of what you copied, that's not a
11 defense, is it?

12 A. That you -- no, it is not.

13 Q. In fact, under the Fair Use Doctrine, you can
14 publish the book even if the copyright holder vehemently
15 objects, right?

16 A. No. I would disagree with that.

17 Q. Okay. Isn't it true that under the Fair Use
18 Doctrine, if -- even if the publisher objects, you still
19 get to publish it?

20 A. The whole book? No.

21 Q. Well, no, you get to use the portion that you
22 published even without permission?

23 A. If the entire analysis is gone through and a
24 Court determines in balancing the factors that that's a
25 fair use.

1 Q. You're not saying --

2 A. It's purely contextual. There is no -- you're
3 asking for a principle of law that does not exist.

4 Q. But you admit this, that under the Fair Use
5 Doctrine, you don't need the publisher's permission?

6 A. That is correct.

7 Q. And under the Fair Use Doctrine, you don't need
8 to attribute the underlying source, do you, under the
9 Fair Use Doctrine?

10 A. Actually, if you look at the classroom
11 guidelines that are part of the legislative history that
12 is an issue. That is the point.

13 Q. I'm asking: Do you know whether or not those
14 classroom guidelines were ever provided to Professor
15 Martinez?

16 A. I don't.

17 Q. Those classroom guidelines are not part of the
18 statute, are they?

19 A. They are not part of the statute, they have
20 been adopted in case law.

21 Q. But they haven't -- case law is conflicting in
22 this area, isn't it?

23 A. I don't know what you mean by "conflicting."

24 Q. Well, you -- okay. I mean -- I mean what
25 "conflicting" would always mean as a part of speech.

1 You have differing opinions --

2 MR. UPPAL: Objection.

3 MR. MONTTOYA: -- that contradict with each
4 other.

5 MR. UPPAL: Another speech. This is not a
6 question.

7 MR. MONTTOYA: He asked me.

8 MR. UPPAL: But you didn't --

9 CHAIRPERSON CRUDUP: Five more minutes.

10 THE WITNESS: I don't know what issue is
11 conflicting.

12 Q. BY MR. MONTTOYA: Now, do you think copyright is
13 a controversial area of law?

14 A. In some cases it can be.

15 Q. Okay. Do you think that the nature of
16 copyright is evolving in light of the Internet?

17 A. Certainly.

18 Q. Fred Bellamy, do you know him?

19 A. I know him, yes.

20 Q. Do you know he -- he went to Harvard College,
21 are you aware of that?

22 A. I am aware of that.

23 Q. Are you aware that he went to Harvard Law
24 School?

25 A. I believe that's right.

1 Q. Are you aware he was a partner at Brown & Bain
2 for many years?

3 MR. UPPAL: Objection. Now --- you know, he's
4 having an objection for wasting time. Mr. Bellamy --

5 MR. MONTROYA: He asked him about Fred Bellamy.

6 MR. UPPAL: No, he didn't. Mr. Bellamy can
7 come here and testify about going to Harvard himself.

8 MR. MONTROYA: Can I respond before the
9 Committee rules? Can I say something before you rule?

10 Mr. Uppal asked: Do you know who Fred Bellamy
11 is, he works at Steptoe & Johnson. I'm just following
12 up on Fred Bellamy.

13 MR. UPPAL: We'll stipulate he went to Harvard.

14 Q. BY MR. MONTROYA: Are you aware he was a partner
15 at Brown & Bain for many years?

16 A. That I don't remember.

17 Q. The date of your expert opinion is April 19,
18 2013, correct?

19 A. Correct.

20 Q. And can -- do you remember criticizing Mr.
21 Bellamy's opinion for not considering your expert
22 opinion?

23 A. I think what I was criticizing was the original
24 report that I had prepared in 2010.

25 Q. Who gave you the materials that you based your

1 opinion on factually? Who gave you the factual data
2 that you based your opinion on?

3 A. In 2010?

4 Q. Whenever.

5 A. 2013? It came from, as I said, the meeting
6 that I had with --

7 Q. It came from the District?

8 A. -- Cassandra Kakar and Joe Sueyoshi, yes. It
9 came from my own independent searching and evaluation
10 and --

11 Q. Did you interview Professor Martinez?

12 MR. UPPAL: Objection. Objection. Once again
13 he's --

14 MR. MONTOYA: I only have two minutes. I'm
15 trying to get my point across.

16 MR. UPPAL: Well, then, don't interrupt.

17 THE WITNESS: And --

18 Q. BY MR. MONTOYA: Did you interview Professor
19 Martinez?

20 A. I did not.

21 Q. So, you don't -- you don't know her factual
22 explanation for what she did, do you?

23 A. Only from the e-mail correspondence and the
24 deposition testimony that I've read.

25 Q. How do you know you've got all the e-mails from

1 Professor Martinez? How do you know they were complete?

2 A. I don't.

3 MR. MONTOKA: No further questions. Thank you.

4 Thank you, sir.

5 CHAIRPERSON CRUDUP: Okay. I guess lunch break
6 recess until what time?

7 THE WITNESS: So, I'm done? Do I understand
8 that?

9 MR. UPPAL: Now, actually, may I make a request
10 of the Committee? I'd like to limit my redirect to this
11 witness to five minutes. So, if we could delay lunch by
12 five-minutes and then we could excuse this witness.

13 CHAIRPERSON CRUDUP: Okay. Proceed.

14

15 REDIRECT EXAMINATION

16

17 BY MR. UPPAL:

18 Q. Mr. Garrison, since Mr. Montoya has questioned
19 you about this opinion, read that last paragraph of page
20 20 out loud to the Committee and please tell the
21 Committee what that means.

22 A. Are you -- the paragraph that starts
23 "similarly"?

24 MR. MONTOKA: Objection.

25 MR. UPPAL: Sure.

1 MR. MONTTOYA: Now, he's asking this witness to
2 read something to you --

3 MR. UPPAL: It's two sentences.

4 MR. MONTTOYA: -- that's already in evidence.

5 MR. UPPAL: It's two sentences.

6 MR. MONTTOYA: That is a waste of time.

7 MR. UPPAL: It takes less than his objection.

8 CHAIRPERSON CRUDUP: You can read. Go ahead.

9 THE WITNESS: Okay. "Similarly Google Books is
10 also transformative in the sense that it has
11 transformed book text into data for purposes of
12 substantive research, including data mining and
13 text mining in new areas, thereby opening up
14 new fields of research. Words in books are
15 being used in a way they have not been used
16 before. Google Books has created something new
17 in the use of book text. The frequency of
18 words and trends in their usage provides
19 substantive information."

20 Q. BY MR. UPPAL: Is there anything transformative
21 about what Dr. Martinez did with respect to the
22 materials that you told the Committee were copyright
23 infringement?

24 A. No. Her coursework were merely a substitute.

25 MR. MONTTOYA: Objection. He's not a

1 mathematician. He's not qualified to answer that.

2 MR. UPPAL: That's not an objection.

3 MR. MONTTOYA: Goes to foundation.

4 MR. UPPAL: I'm sorry. I don't mean to chuckle
5 at that.

6 Q. BY MR. UPPAL: Would you tell the Committee
7 what "transformative" means in the realm of copyright
8 law?

9 A. Sure. In the realm of copyright law, what
10 "transformative" means is that you would take -- taken
11 an original work and repurposed it for something
12 different. Not taken original work, summarized it, and
13 used it for the very same purpose.

14 Q. So, what did Dr. Martinez do and how is it
15 different from the Google Books project?

16 MR. MONTTOYA: Objection.

17 THE WITNESS: Dr. Martinez copied --

18 MR. MONTTOYA: He testified he doesn't know what
19 the Google Books project is about. He's testified that
20 he's never even been on Google Book.

21 MR. UPPAL: That's not an objection. That's an
22 attempt by Mr. Montoya to keep the Committee from
23 understanding why this Google --

24 CHAIRPERSON CRUDUP: Allow him to finish his
25 five minutes.

1 MR. UPPAL: Thank you.

2 THE WITNESS: The distinction is that what Dr.
3 Martinez did was to copy out of the textbooks, create
4 what is essentially a condensed version of the textbook,
5 of the -- of the principles that she was teaching, and
6 allowing the students to use that as a substitute for
7 the textbook itself. Totally different from what the
8 Judge was describing there in Google Book.

9 Q. BY MR. UPPAL: So, in plain English, does
10 "transformative" mean transforming it into substantially
11 different?

12 A. Yes.

13 Q. And that is what Judge Chin from the section
14 just read held that Google Books does?

15 A. Correct.

16 Q. It takes a work that may be copyright but the
17 manner in which Google Books uses it, transforms it
18 isn't something else?

19 A. Yes.

20 Q. That's what makes it a fair use?

21 A. Yes.

22 Q. Is there anything with what Dr. Martinez did
23 with verbatim, rampant copying that is transformative?

24 A. No. Google Books was not simply republishing
25 books for anyone to get access to.

1 Q. And in some cases, wasn't there even permission
2 that Google Books had?

3 A. There may have been, I don't know.

4 MR. MONTOYA: Objection. Reading from the
5 opinion --

6 THE WITNESS: With respect to the partner
7 program --

8 THE COURT REPORTER: I'm sorry. I'm sorry.
9 Please, one at a time.

10 MR. MONTOYA: That was an objection, Chair.

11 DR. REYES: I don't believe he answered.

12 MR. UPPAL: I just want him to explain to the
13 Committee that some of what Google Books -- this opinion
14 is about, some of what Google Books, what this opinion
15 does, concerned copyrighted material that the Google
16 Books did not have permission for; but, in that case the
17 Judge said it's transformative, it's been transformed
18 into something different. In respect to another
19 section, Google Books obtained permission.

20 MR. MONTOYA: Now -- now, he's -- now the
21 hypocrisy of what he just did --

22 MR. UPPAL: Well, I'm trying to ask the
23 witness. He's cutting into my five minutes. May I
24 continue, Mr. Chairperson?

25 CHAIRPERSON CRUDUP: One more minute.

1 MR. UPPAL: Okay.

2 THE WITNESS: So, page 5 of the opinion is
3 referring to the partner program, where it specifically
4 says that works are displayed with permission of the
5 right's holders; it explains that partners provided
6 Google with a printed copy of their books for scanning
7 or a digital copy if one existed; partners then decided
8 how much of their books from a few sample pages to an
9 entire book would be browsable; and as of 2012, there
10 were approximately 2.5 million books with the consent of
11 some 45,000 right's holders as part of that program.

12 MR. UPPAL: Thank you.

13 Thank you for indulging me with five minutes,
14 Mr. Chairperson and Committee Members. I greatly
15 appreciate it.

16 CHAIRPERSON CRUDUP: Recess until 12- -- 12:25
17 or so.

18 (Whereupon the noon recess was taken from 11:57
19 a.m. until 12:29 p.m.)

20 (Whereupon the witness enters the hearing
21 room.)

22
23 CHAIRPERSON CRUDUP: You can call your next
24 witness. I guess we're calling to order or reconvening.

25 MS. BLACH: All right, we call our next

1 witness, Dr. Cassandra Kakar.

2
3 CASSANDRA KAKAR,
4 called as a witness herein, having been first duly
5 sworn, was examined and testified as follows:
6

7 DIRECT EXAMINATION
8

9 BY MS. BLACH:

10 Q. Dr. Kakar, can you please let the Committee
11 know who you are and where you work.

12 A. Yes. I'm the Vice President of Academic
13 Affairs. My name is Dr. Cassandra Kakar and I work at
14 Phoenix College.

15 Q. How long have you worked for MCCC?

16 A. About 18 years.

17 Q. Have you ever met Dr. Martinez before?

18 A. Yes.

19 Q. When did you meet Dr. Martinez?

20 A. About nine, nine to ten years ago. She was the
21 Department Chair and I just became the Interim Vice
22 President of Academic Affairs, so we worked together
23 then.

24 Q. Did you have any interactions with her in 2010?

25 A. Yes, I did.

1 Q. What happened in 2010?

2 A. There was a bit of a controversy in January
3 because my Vice President of Administrative Services had
4 notified me that there was some concern about copyright
5 violation from the copy center regarding some of the
6 materials Dr. Martinez wanted to have reproduced or
7 printed.

8 Q. When were you first notified of these issues?

9 A. Early in January, January 2010. Ronnie --
10 Dr. -- Ms. Elliot let me know about them. She wanted me
11 to kind of explore, find out what was going on, and so I
12 did do that, did a bit of an investigation.

13 Q. And what was this investigation that you did?

14 A. Well, I felt like I needed to get Mr. Sueyoshi,
15 the Department Chair, involved because there were large
16 -- there was significant-sized workbooks that were being
17 held up to be printed because they felt there was some
18 copyright. So, I asked Joe if he would review the
19 materials and compare them to the textbooks we were
20 using and he did that for us. There were 10 to 12 pages
21 for two of the textbooks, you could see very clearly it
22 was directly from the book.

23 So, I then reported it to Ms. Elliot and said
24 that this is what Mr. Sueyoshi had discovered, and that
25 Ronnie and I had pretty much concurred that we needed to

1 talk to Dr. Solley and let her know that we were -- we
2 had a lot of concern about this and we felt like we
3 needed to let District Legal know. And Dr. Solley, once
4 we presented it to her, she agreed. So we met with
5 Maggie McConnell from the District Office about this.

6 Q. And what happened after you met with Maggie
7 McConnell from the District Office?

8 A. Well, Maggie was very concerned as well. We
9 were very concerned about the college as well as the
10 District and the liability that could possibly happen.
11 And so then Ronnie Elliot, basically she let Dr.
12 Martinez know that there was some concerns and that
13 she's not going to be able to have those copies made.

14 Q. Dr. Kakar, I'd like to show you a document.
15 This is Exhibit 23 to the District's exhibits. Do you
16 recognize this document?

17 A. Yes, I do.

18 Q. And what is that document?

19 A. Looks like Dr. Martinez's writing to Ronnie
20 asking: "Please remind me, what are the items I had
21 printed for fall that were suspect and the same
22 for spring," because there were some fall print
23 jobs and some springs. And Ronnie responded to her
24 there was a mechanism in place to flag potential
25 copyright materials and it was brought to her attention

1 that some of the items printed were suspect and -- for
2 fall as well as spring.

3 So, Ronnie was asking Dr. Martinez, does she
4 have any documentation that -- from the publisher that
5 released her to use the materials in this way; and, if
6 so, she just wanted the documentation so she could
7 release her print job and then we could move on. But if
8 she didn't have the approval, then we cannot print the
9 request at this time.

10 Q. Dr. Kakar, the e-mail at the bottom that is
11 dated Jan 12th, 2010, it's from Ronnie Elliot to
12 Cleopatria Martinez --

13 A. Mm-hm.

14 Q. -- is that the initial notification to Dr.
15 Martinez that you mentioned earlier?

16 A. Yes. I mean, yes, this kind of got it started.

17 Q. And can you please read for me the first
18 sentence of that e-mail.

19 A. From Ronnie?

20 Q. Yes.

21 A. "As you may or may not know, we have mechanisms
22 in place to red flag potential copyright
23 issues."

24 Q. Okay. I'm going to show you another document.
25 It's been marked as Exhibit 24 to the Districts's

1 exhibits and this is another e-mail, and it is from
2 Ronnie Elliot, and it's dated January 26th, 2010, to
3 Cleopatria Martinez. Do you recognize this document?

4 A. Yes, I do. Yes, and she lets Dr. Martinez know
5 that we did talk indeed to Margaret McConnell, our
6 District legal counsel, regarding copyright infringement
7 and fair use as defined in federal law. We provided
8 Maggie with the copies of her request and a copy of the
9 textbooks and this morning received the finding based on
10 the federal copyright law, including limitations of fair
11 use. So, now it is documented in this piece.

12 Q. Dr. Kakar, do you know whether the District, in
13 addition to these two e-mails that I just showed you,
14 ever met with Dr. Martinez to explain their copyright
15 concerns to Dr. Martinez?

16 A. Well, I know that there were a lot of e-mails
17 going back and forth and I believe that Dr. Martinez
18 actually spoke to Maggie McConnell on the phone and had
19 a phone conference with her as well.

20 Q. Did you ever have any meetings with Dr.
21 Martinez about --

22 A. Oh, I had multiple meetings with Dr. Martinez.
23 E-mails, face-to-face, phone conversations. Extensive.
24 In fact, there's a document that's ten pages long of
25 communications and ways to reach out to Dr. Martinez.

1 Q. I'm going to walk you through some of these
2 communications. We went through the January 12th
3 e-mail; this is the January 26th e-mail that we just
4 discussed; the next exhibit is Exhibit 25, and this is
5 another e-mail. It's dated January 28th, 2010, and this
6 is from Margaret McConnell to Cleopatria Martinez. Do
7 you recognize this e-mail?

8 A. Yes, I do remember this.

9 Q. And what does that e-mail summarize?

10 A. Basically that anything from copyrighted source
11 reproduced without written permission, there has to be
12 written permission for the copyright holder to say that
13 it's okay. It's an error. An individual that would be
14 printing without that is violating copyrights.

15 Q. Dr. -- Dr. Kakar, did anything prompt that
16 e-mail? Had Maggie McConnell met with Dr. Martinez
17 prior to sending this e-mail?

18 A. Perhaps. I recall a phone conversation, but
19 perhaps they did meet face-to-face.

20 Q. Was she --

21 A. And she said: I explained to you today that I
22 represented District --

23 MR. MONTROYA: I need to object as to this
24 witness testifying as to what she thinks transpired
25 between two individuals when she doesn't, in fact, know

1 based on her knowledge. They didn't tell her it
2 happened, she didn't witness it happen.

3 THE WITNESS: No, I was copied -- sorry.

4 MS. BLACH: Let me respond to the objection to
5 the Hearing Committee. Dr. Kakar is copied on this
6 e-mail, so she is testifying based on information that
7 she knows.

8 MR. MONTROYA: But she was asked whether or not
9 Professor Martinez actually met with Ms. McConnell and
10 that's what I was objecting to.

11 MS. BLACH: And that's actually addressed in
12 the first sentence of the e-mail.

13 CHAIRPERSON CRUDUP: Okay. Continue.

14 Q. BY MS. BLACH: So, as I was asking you Dr.
15 Kakar, can you please read the first sentence of that
16 e-mail?

17 A. "As we discussed today, it is inappropriate
18 to copy anything from copyrighted source and
19 reproduce it without written permission of the
20 copyright holder, it is more egregious if a
21 person reproduces it without providing notice
22 on the material about who owns the copyright."

23 Q. So that's a third e-mail where Dr. Martinez was
24 instructed regarding copyright laws?

25 A. Yes.

1 Q. Let's walk through another one. Here is
2 Exhibit 26 and this is an e-mail from Paul DeRose dated
3 Friday, February 12, 2010, to Cleopatria Martinez;
4 you're, of course, copied on this e-mail. It appears to
5 be a summary of the meeting. Can you please explain
6 what happened during that meeting for me?

7 A. Yes. It was a meeting with myself, Paul
8 DeRose, who is now the Interim Vice President of
9 Administrative Services, and our faculty Senate
10 President Denny Sheehan was with Dr. Martinez. And we
11 basically discussed copyright laws, we went over the
12 copyright verbiage that is printed in the front of the
13 textbook that is being used in the math class.

14 And "in order to use material from the text,
15 prior approval must be obtained from the
16 publisher's Legal Department" -- we covered all
17 this with Dr. Martinez -- "and an approval from
18 the publisher rep is not acceptable.

19 Cleopatria was referred to the e-mail sent by
20 Maggie McConnell which describes the copyright
21 issue and contains a link to seek publisher's
22 approval. Cleopatria said she understands the
23 copyright law and will not use material from
24 any textbook without prior approval from the
25 publisher's Legal office. And if Cleopatria

1 decides to bind her notes or handouts,
2 Cassandra" -- I -- "recommended they be
3 distributed by the bookstore similar by the
4 practice used by other faculty at her
5 department and Phoenix College. This will be a
6 nominal fee to the students, and will also
7 minimize cost to the Department's print budget.
8 The posting of notes on Blackboard is also an
9 option.

10 "In addition to our discussion, we would like
11 to encourage you" -- we are asking Dr. Martinez
12 -- "to attend an upcoming copyright workshop
13 that is being held at Phoenix College. This
14 workshop is being held March 1st from 1:00 to
15 3:00 p.m."

16 Q. As of February 12th, 2010, Dr. Martinez told
17 you that she understood copyright laws?

18 A. Yes, she did.

19 Q. Did it appear to you that she understood
20 copyright laws?

21 A. She seemed sincere and she felt like she
22 understood more and knew more about copyright laws.

23 Q. And this summary is based off of an in-person
24 meeting that you had with Dr. Martinez, with Paul
25 DeRose, and with Denny Sheehan?

1 A. Yes.

2 Q. How is Denny Sheehan invited to this meeting?

3 A. Dr. Martinez invited him as a faculty Senate
4 President.

5 Q. And, Dr. Kakar, I would like to bring your
6 attention to the last sentence of this e-mail. Can you
7 read that allowed for me?

8 A. "This workshop is scheduled for March 1st from
9 1:00 to 3:00 p.m."

10 Q. Sorry. The last --

11 A. "In addition to our discussion, we would also
12 like to encourage you to attend an upcoming
13 copyright workshop being held March 1st from
14 1:00 to 3:00 p.m."

15 Q. Dr. Kakar, do you know whether Dr. Martinez
16 attended that copyright workshop that she was invited
17 to?

18 A. No, she did not attend.

19 Q. Do you know whether the District took any steps
20 to hold a separate one-on-one training session for her
21 since she could not attend that meeting?

22 A. Yes. I arranged for her to meet with one of
23 our librarians that has expertise in copyright and also
24 attended the workshop and she went through the
25 PowerPoint with Dr. Martinez in a one-on-one

1 environment.

2 Q. Let me introduce another exhibit. This is
3 Exhibit 8. This is a letter dated April 2nd, 2010. Do
4 you recognize this document?

5 A. Yes, I do. This is a letter from Dr. Solley to
6 Dr. Martinez.

7 Q. And, in essence, what is this notifying Dr.
8 Martinez of?

9 A. Well, that basically, she's been using the
10 materials that she -- that are copyrighted -- or,
11 violate copyright, and that we're going to have to
12 suspend her copying privileges again, because Icon
13 Services are -- you know, it was pointed out that these
14 materials are being printed again. So, Dr. Solley
15 basically felt like she needed to suspend her -- her
16 printing privileges.

17 Q. And does this letter summarize any of the
18 copyright regulations?

19 A. Yes. It gives the detail 3.2 Copyright
20 Regulation from our Governing Board 1, 2, and 3, and the
21 back page has 4, 5, and 6.

22 Q. And I'd like you to read the last two
23 paragraphs out loud.

24 A. "You are finally admonished that any further
25 copyright/fair use violation would lead to

1 disciplinary action taken against you, up to
2 and including termination of your employment.
3 "I am willing to arrange for individual
4 training and consulting on copyright if you
5 feel it will be helpful. But I will restore
6 your copying privileges only when I determine
7 that you not only understand your legal
8 obligations but also that you will strictly
9 adhere to them."

10 Q. So, on April 2nd, 2010, Dr. Martinez was yet
11 again advised that her conduct violated copyright laws?

12 A. Yes.

13 Q. I'm now showing you an exhibit that's been
14 marked as Exhibit 25 to Dr. Martinez's exhibits. And
15 this is an e-mail -- well, there's actually two e-mails.
16 The first e-mail is on the lower portion, on page 2 of
17 this. It starts at the bottom of page 1, and it's from
18 Maggie McConnell -- Margaret McConnell to Cleopatria
19 Martinez, and then on top of that there's another e-mail
20 from Lee Combs to Cleopatria Martinez, and these are
21 both dated on April 8th, 2010. Do you recognize these
22 e-mails?

23 A. Yes, I do.

24 Q. Can you please describe for me that first
25 e-mail from Maggie McConnell to Cleopatria Martinez?

1 A. Yes. It seems like Cleopatria -- or, Dr.
2 Martinez was asking Maggie McConnell to actually read
3 some of her class materials and she advised her to speak
4 to the librarian about the questions, you responded the
5 librarian had asked you to speak to me. It was my
6 understanding you wanted advice concerning whether, in
7 your words, changing a number from a three to a five or
8 plus to a minus from someone's copyrighted math equation
9 presumably in a textbook would avoid a copyright
10 violation.

11 And Maggie says: "I explained to you that the
12 numbers, sequences of numbers are definition of
13 'literally works' under federal copyright
14 guidelines. While I noted that two plus two is
15 equal to four is not copyrightable, I advised
16 you that more complicated math equations are.
17 I stated that the only way for you to ensure
18 you do not violate copyright is to make up the
19 math questions completely on your own to
20 illustrate a math theory. As I noted, that
21 would only be the safe approach. And with your
22 advanced degree and your years of experience
23 that should not be difficult.
24 "You still indicated you wish for me to review
25 materials. You also advise that you could not

1 attend the special presentation I and Hazel
2 Davis prepared on copyright law for Phoenix
3 College last month because of other
4 commitments. However, as I reiterated, I'm not
5 going to be in a position to tell you whether
6 the changing of a number or two, or of a
7 mathematical sign, is enough.

8 "In fact, no Maricopa Community College
9 District is going to be in a position to tell
10 you that 'tweaking' is okay, particularly when
11 the owner of the original work isn't given
12 credit for the 'tweaked' work. The verdict
13 under the law would almost certainly be that
14 'tweaking' would not solve the problem, and
15 that is the answer that you are going to get
16 from a wide range of folks."

17 Q. Doctor, in the interest of time, I'm going to
18 go through some e-mails. I want you to summarize them
19 rather than read them all into the record.

20 A. All right.

21 Q. I do want to respect the Committee's time.

22 A. Okay.

23 MR. MONTTOYA: I object. Now, this -- first
24 this witness is reading e-mails that are already into
25 evidence that you can read yourself. Now she's

1 purporting to summarize e-mails that are already in
2 evidence that you can read for yourself. That is
3 improper and it's a super waste of time.

4 MS. BLACH: I would like to try to speed this
5 up if possible with the Hearing Committee. I would be
6 happy -- if Mr. Calderon was willing to stipulate --

7 MR. UPPAL: Montoya.

8 MR. MONTTOYA: I'm Montoya, he's Calderon.

9 MS. BLACH: I'm sorry.

10 MR. MONTTOYA: That's okay.

11 MS. BLACH: I'm sorry. If you're willing to
12 stipulate to the fact your client was repeatedly
13 notified of copyright violations on dozens of occasions
14 via e-mail, via letters, via in-person meeting, and
15 telephone, we can bypass this entire line of
16 questioning.

17 MR. MONTTOYA: We dispute that she violated
18 copyright; however, we do not dispute that these e-mails
19 were sent or that these e-mails were received, which is
20 very, very different. And because we do not dispute
21 that they were sent or that they were received, we don't
22 need to go through this process. And I think that we're
23 already behind time and I would hope that this witness
24 will testify to things that she has personal knowledge
25 of that is not already in these documents, but

1 summarizing -- you know, you wouldn't want me to
2 summarize documents in to evidence, you'd rather read
3 the documents yourself firsthand.

4 DR. REYES: Mr. Chairman, may I suggest that if
5 we abide by the time that's written on the board, you
6 can proceed as you are if you so chose to use your time
7 that way, but that we adhere to the time on the board.
8 Would that be acceptable?

9 CHAIRPERSON CRUDUP: That's right.

10 MR. MONTOYA: I don't -- that would be fine
11 with me. What I don't want is: Oh, we're out of time
12 and how unfair.

13 DR. REYES: That is why you can use your
14 judgment.

15 MS. BLACH: Thank you. I'll be happy to
16 proceed that way.

17 Q. BY MS. BLACH: So, these e-mails dated
18 April 8th, 2010, is that yet another notification to Dr.
19 Martinez --

20 A. Yes.

21 Q. -- of her copyright violations?

22 A. Yes. Lee made commentary after Maggie wrote
23 her summary.

24 Q. Okay. So that's two e-mails.

25 I would like to next introduce Exhibit 27. And

1 earlier you described a document that you said was about
2 ten pages long. Is this that document?

3 A. Yes, this is the document that I was referring
4 to.

5 Q. And does this document -- is this document a
6 chronology?

7 A. Yes, it is.

8 Q. And is this document a chronology of all of
9 the -- well, many of the repeated communications that
10 you had with Dr. Martinez about copyright issues?

11 A. Yes.

12 Q. And it's ten pages long, single spaced?

13 A. Correct.

14 MR. MONTTOYA: When we refer to documents, I
15 would ask that the Chairman direct whoever is referring
16 to them to identify them chronologically so we can have
17 some type of idea of when this happened because I think
18 that's important in this case.

19 MS. BLACH: All of these exhibits are, in fact,
20 dated and I actually have been going through them
21 chronologically.

22 MR. MONTTOYA: Well, I mean, I would ask that
23 you identify the date for the record and I would ask the
24 Chair to direct you to do so, please.

25 MS. BLACH: I'm happy to do so. This is an

1 October 12th, 2010, letter to Dr. Martinez detailing the
2 repeated communications to Dr. Martinez regarding her
3 copyright violations.

4 Q. BY MS. BLACH: In the interest of time, Dr.
5 Kakar, I'm trying to fly through a couple of exhibits
6 here.

7 The next exhibit that I'm introducing is
8 Exhibit No. 9. This is the December 9th, 2010,
9 directive. Do you recognize that document?

10 A. Yes, I do.

11 Q. And can you read for me just the first -- the
12 first sentence of that one, two, three, fourth
13 paragraph?

14 A. "Pursuant to Section 3.7.4 of the RFP, I now
15 direct you to only use course materials
16 approved by the Department that are available
17 in the bookstore for sale to the students and
18 that are authorized by persons other than
19 yourself."

20 Q. Do you know why this directive was put into
21 place?

22 A. Because there were more and more attempts and
23 actual printing of materials that violated copyright
24 law.

25 Q. And do you know whether Dr. Martinez abided by

1 this December 9, 2010, directive?

2 A. She actually -- no, she didn't. She continued
3 to try to use her own materials.

4 Q. Can you give me any examples of how she tried
5 to evade this directive?

6 A. Well, I know that sometimes -- one time she had
7 adjunct faculty members print materials for her; I know
8 she would print things from her computer directly to the
9 laser printer at the -- in the department, Math
10 Department; and I also know that she willfully went
11 around the processes we put in place and went to a
12 private entity, Staples, to have books created and bound
13 by materials the author had not approved be printed.

14 Q. Are there any other examples detailed in the
15 October 12th, 2010, chronology that we discussed a few
16 minutes ago?

17 A. I think there's more that comes later. I mean,
18 I can -- if you want to go on to the next letter.

19 Q. I was just asking --

20 A. Yeah, October 12th.

21 Q. I was just asking generally if you were aware
22 whether there were additional attempts to avoid the
23 directive that were sent forth in the October 12, 2010,
24 letter?

25 A. Yeah. I mean, at some point Dr. Solley asked

1 that Joe Sueyoshi approve all the print jobs of Dr.
2 Martinez just to make sure that copyright violations
3 were not occurring, and he saw numerous times that he
4 had to say that the materials could not be printed
5 because they had contained the same types of things that
6 were in the previous documents from way back when Ronnie
7 Elliot discovered it with Icon back in 2010.

8 MR. MONTTOYA: Excuse me. I have one -- I
9 didn't mean to interrupt. Were you done?

10 THE WITNESS: Yes. Thank you.

11 MR. MONTTOYA: My time for cross-examination
12 comes out of their time, and I just wanted to get the
13 Committee's guidance as to when that time begins before
14 it all runs out. Like, 1:25 is right around the corner.

15 CHAIRPERSON CRUDUP: Okay. 1:25 you can begin
16 your cross-examination.

17 MR. MONTTOYA: My -- my case begins at 1:25, not
18 my cross-examination of their case. The Chair
19 previously ruled with the concurrence of the entire
20 Committee, that cross-examination time would come out of
21 the person who called the witness, unless the person
22 who's cross-examining, the examiner was wasting time.
23 So, my cross-examination, unless I'm misunderstanding
24 the Committee's ruling, would have to transpire before
25 1:25. That's all I'm asking.

1 MR. CALDERON: Mr. Chairman, may I ask a
2 question? Counsel, how long do you have left of this
3 witness?

4 MS. BLACH: I only have a few minutes, maybe
5 five minutes or so left of my direct, and my colleague
6 does have an additional witness that he intends to call
7 for a few minutes.

8 MR. CALDERON: Does that help at all with the
9 timetables?

10 MR. MONTROYA: Well, I -- I'm not going to have
11 nearly as much time as she's taken for this witness, but
12 I probably will need ten minutes. So, that's going to
13 put us -- we're not going to make it, and that's the
14 only reason why I bring this up. Because I don't want
15 to be penalized for it into my time.

16 MR. UPPAL: I want to bring something up
17 myself. Mr. Montoya, with his speeches and --

18 DR. CAIRE: I'm sorry.

19 MR. UPPAL: -- addressing the Committee, has
20 actually acted unfairly towards us. I mean, this has
21 got to be his 24th issue and speech on this matter. And
22 Mr. Calderon, I want to ask you, when we had a prior
23 telephone conference, didn't you state something along
24 the lines of there would be attempts to make it roughly
25 equal, but it was not down to the last minute?

1 MR. MONTROYA: I object to Counsel being --

2 MR. UPPAL: Could we get Mr. Calderon to
3 actually address that?

4 MR. MONTROYA: First, I need to object for the
5 record and I did, so I'll shut up now.

6 MR. CALDERON: Mr. Chairman, first of all, I'm
7 not going to be examined. It's a good shot, but I'm not
8 going to be examined. But I will say that my
9 understanding of talking to the Committee, the Committee
10 was going to do everything they could to make it as
11 equal as possible. I did not promise precision.

12 MR. UPPAL: So, my request would be if we could
13 get through this witness without Mr. Montoya raising
14 objection on the same issue again, because that's what's
15 unfair.

16 CHAIRPERSON CRUDUP: Just continue, please.

17 MS. BLACH: Thank you, sir.

18 Q. BY MS. BLACH: Let's see where I was now.
19 So -- so I can move onto the next line of questioning in
20 the interest of time, I just want to make sure I
21 understand your response correctly. So, essentially,
22 you just testified that in addition to violating the
23 directive by submitting copy jobs to Joe Sueyoshi that
24 did not comply with the directive; Dr. Martinez also
25 attempted to avoid the directive by having an adjunct

1 faculty member make photocopies for her by printing
2 repeated documents directly to the Math Department's
3 laser printer; and also by evading the directive by
4 having materials copied at an offsite Staples store?

5 A. That's correct.

6 Q. And those are the ones that you're aware of?

7 A. Yes.

8 Q. Let's put the shift over to -- let's talk some
9 more about the copies that Dr. Martinez made at the
10 off-campus Staples store. How were you notified about
11 those Staples -- how were you notified about those
12 photocopies?

13 A. Students began to complain to the Department
14 Secretary and the Department Chair about not getting a
15 receipt. They didn't get a receipt from Dr. Martinez
16 for the book that they purchased from her.

17 Q. And is it -- was it improper for Dr. Martinez
18 to have sold these materials directly to her students?

19 A. Yes. It's improper on a number of levels.
20 First of all, the common sense, a faculty should never
21 sell anything to a student. They're really in a
22 position where a student might feel obligated to
23 purchase something because they're the instructor that
24 is going to be grading them. So, it's very
25 inappropriate in that level. But also it violates the

1 cash-handling policies and procedures of the Maricopa
2 Community College District.

3 Q. Was Dr. Martinez aware of the Cash-Handling
4 Policy?

5 A. Yes. She has signed off on the designations
6 that we all do at the beginning of the year. She's very
7 aware of the policies.

8 Q. After you were notified of the violation of the
9 Cash-Handling Policy, did you ever meet with Dr.
10 Martinez about her violation?

11 A. Yes, we did. Actually, Dr. Solley and I met
12 with her, I believe it was in October, and we actually
13 had a second Corrective Action, and it was a formal
14 meeting and a document was being read by Dr. Solley to
15 Dr. Martinez about this cash-handling incident, and Dr.
16 Martinez was very agitated, did not wish to stay,
17 challenged Dr. Solley. And Dr. Solley was reading the
18 letter to her, she told Dr. Solley she didn't need to be
19 read to and she basically left with the document in hand
20 and left the -- left the office.

21 Q. Did she leave the office before the meeting was
22 concluded?

23 A. Yes, she did.

24 Q. So, she essentially walked out of the meeting?

25 A. Yes, she did.

1 Q. During this meeting, was Dr. Martinez
2 instructed to issue refunds to the students that she
3 improperly charged?

4 A. Yes. We got to that, I think that was about
5 when she stopped the meeting and walked out. It's
6 documented in that letter, though, that she is to refund
7 the students.

8 Q. Do you know whether the District took any steps
9 to notify the students that Dr. Martinez would be
10 issuing refunds?

11 A. She did not take the steps but we did. We --
12 Joe Sueyoshi, the Department Chair, sent out an e-mail
13 blast to students that were involved in her class and
14 let them know Dr. Martinez would be refunding them and
15 they are to notify -- and be in touch with her so they
16 could get their money back.

17 Q. Do you know whether the students ever received
18 those refunds they were supposed to receive?

19 A. My understanding is one student got their money
20 returned, I believe that was Patty, but no other
21 students received a refund.

22 Q. In fact, didn't you receive copies of e-mails
23 in which students complained about not receiving the
24 refunds?

25 A. Yes, and I actually sat down with some

1 guidelines and asked Dr. Martinez to please send --
2 provide me with copies of checks, the front and back
3 copies, so I could make sure that the students would be
4 reimbursed. And I believe I sent that message to her
5 January 8th of 2012, and gave her until the 18th, I
6 believe, to bring me the documentation; and I never
7 received anything from Dr. Martinez.

8 Q. To date, has Dr. Martinez complied with your
9 instruction to provide you with copies of cancelled
10 checks for the student reimbursements?

11 A. No.

12 Q. Do you know if students are still actively
13 seeking refunds from Dr. Martinez?

14 A. I think there's a few. I know that the
15 cashiers have told me that students come to the
16 cashier's office because they got this e-mail blast and
17 they're wondering where their money is.

18 Q. And did you report these issues with the
19 Cash-Handling Policy to anyone?

20 A. Well, of course, Dr. Solley knew and District
21 legal was aware and the HR area.

22 MS. BLACH: All right. Pass the witness.

23 MR. MONTTOYA: Chairman, may I proceed?

24 CHAIRPERSON CRUDUP: Yes. You may proceed.

25 MR. MONTTOYA: Thank you.

CROSS-EXAMINATION

BY MR. MONTOKA:

Q. Hello. I'm Steve Montoya.

A. Hello.

Q. How are you?

A. Fine. How are you?

Q. Have we met?

A. I don't think we have.

Q. I don't think we have either.

I have a few questions for you. Do you have a
doctorate degree?

A. Yes, I do.

Q. In what?

A. Education.

Q. Ph.D. or Ed.D.?

A. Ed.D.

Q. When did you obtain it?

A. About two years ago.

Q. Are you an expert in copyright law?

A. No, I'm not.

Q. Do you purport to be -- is studying copyright
law your hobby?

A. No.

Q. You testified repeatedly, and correct me if I'm

1 wrong, that in order to copy somebody else's work
2 without violating the copyright law, you need their
3 written permission?

4 A. I was reading from lawyer's, what they had
5 devised.

6 Q. Do you know --

7 A. I didn't write those.

8 Q. Do you know --

9 A. I was reading the lawyer's commentary.

10 Q. Okay. Do you know whether that's true or not?

11 A. Well, I do -- I -- from -- I've learned quite a
12 bit now, and from some of the dialogues and the
13 information we've received from attorneys, if the
14 student has purchased the textbook and if the publisher
15 has said it's okay to use it, use materials, then that
16 faculty member could use it, but it's very important
17 that the student purchases the textbook.

18 Q. Do you know whether or not under the Fair Use
19 Doctrine you can use for limited educational purposes a
20 copied work without the publisher's permission? Do you
21 know whether you can do that or not?

22 A. I'm not going to -- I won't answer that.

23 Q. You don't know?

24 A. I don't know.

25 Q. I understand.

1 Do you know -- you mentioned Maggie McConnell.
2 I just met her during lunch. Do you know her?

3 A. Yes.

4 Q. She's the District -- she's one of the
5 District's lawyers, right?

6 A. Yes, that's correct.

7 Q. You don't know whether or not she's a copyright
8 expert, do you?

9 A. I think she has some knowledge but she did feel
10 it was -- it was wise to bring in an expert, a legal
11 expert, which we did.

12 Q. Are you aware that Professor Martinez
13 repeatedly contacted Maggie McConnell asking her for
14 direction, asking her to review stuff in advance, and
15 Maggie McConnell refused?

16 A. I wasn't aware of that.

17 Q. Okay. Do you know whether or not Professor
18 Martinez -- do you know a guy named Lee Combs?

19 A. Yes, I know Lee.

20 Q. Tell the Committee who Mr. Lee Combs is?

21 A. He's our General Counsel or attorney for the
22 District.

23 Q. Okay. Do you know whether or not Professor
24 Martinez repeatedly contacted the General Counsel for
25 the District, Lee Combs, and asked him to give her

1 guidance regarding whether or not her materials violated
2 copyright law or, in fact, fell within copyright's Fair
3 Use Doctrine? Do you know that?

4 A. I don't know that.

5 Q. Okay. Now, you said that you know -- you
6 testified that Professor Martinez met with doctor -- the
7 District's librarian?

8 A. No. Phoenix College librarian.

9 Q. That's right. Thank you for correcting me.
10 You testified Professor Martinez met with
11 Phoenix College's librarian --

12 A. Yes.

13 Q. -- to talk about copyright law?

14 A. Because it was unfortunate she missed the
15 workshop. We --

16 Q. Do you know why she missed the workshop?

17 A. Can I finish?

18 Q. Of course you can.

19 A. We felt it was important that we go through the
20 PowerPoint, and one of our librarians has some expertise
21 and has attended the workshop. So, we had them sit down
22 and they had a one-on-one session together.

23 Q. Do you know whether or not that librarian
24 actually told Professor Martinez that Professor Martinez
25 seemed to understand copyright law as well as the

1 librarian did?

2 A. I don't know that. I did not have that
3 conversation with...

4 Q. Do you know whether or not the Phoenix College
5 librarian actually even went through the PowerPoint with
6 Professor Martinez?

7 A. I was told she did go through the PowerPoint.

8 Q. You don't know that, do you?

9 A. I asked the librarian and she said she went
10 through the PowerPoint.

11 Q. Did you ask Professor Martinez?

12 A. No, I did not.

13 Q. Okay. I think that you testified you were
14 reading from an exhibit, I think it was Exhibit 26, that
15 more complicated mathematical equations are subject to
16 copyright. Did you say that?

17 A. I read what Maggie McConnell wrote.

18 Q. Do you know whether that's true or not?

19 A. I don't have personal knowledge, but I was
20 reading what the attorney Maggie McConnell had written
21 to Dr. Martinez.

22 Q. So, you can't -- you can't swear -- you're
23 under oath, right?

24 A. Correct.

25 Q. You can't swear to the Committee you know

1 that's even true, can you?

2 A. I'm not an expert in copyright laws.

3 Q. Okay. I think that you testified that
4 Professor Martinez was subverting the directive by
5 copying things directly to the laser printer, right?

6 A. In the Math Department.

7 Q. Have you seen what she actually copied?

8 A. Yes.

9 Q. What? What was it?

10 A. Stacks of -- well, here's just a few of them.
11 I think there was at least 14 that were printed. At
12 least 14. And here are -- this is what was found, nine
13 copies.

14 Q. Did you ask Professor Martinez what she was
15 going to do with those?

16 A. No, I did not.

17 Q. Why not?

18 A. I received this from the Department Chair.

19 Q. Okay. So, you don't know whether it was to
20 distribute to students or for some other reason or
21 whether it was even an accidental printing? Do you
22 know?

23 A. I was told by Dr. Martinez --

24 Q. I'm asking you.

25 MS. BLACH: Sir, please let the witness answer

1 the question.

2 MR. MONTROYA: Well, I'm going to -- please
3 don't direct me what to do, that's the Chair's job.

4 MS. BLACH: Chairperson, I respectfully request
5 that Mr. Montoya allow the witness to finish her answer
6 before cutting her off and proceeding to the next
7 question.

8 CHAIRPERSON CRUDUP: Please allow her to
9 finish.

10 MR. MONTROYA: Yes, sir.

11 THE WITNESS: So this was brought to me by the
12 Department Chair and they knew that at least 14, they
13 don't know where the other copies were. This is the
14 same materials that were under question by Maggie
15 McConnell.

16 And as I met with Dr. Martinez she had
17 explained to me that she made a mistake and put in a
18 wrong number in her computer and printed this -- it
19 wasn't what she wanted to have printed, she just wanted
20 one copy to have printed.

21 Q. BY MR. MONTROYA: You've made mistakes in
22 printing sometimes, right?

23 A. Well, probably, yes.

24 Q. There's nothing nefarious about that, is there?
25 No?